

MONTANA LEGISLATIVE HISTORY

Chapter 202 19 87

Bill H _____ S 20 Original bill & history ☒ C

H. Committee on Judiciary

Hearing Date(s) Mar 12 ☒ C

Mar 13 ☒ C

_____ ☐ C

_____ ☐ C

Date Out Mar 13 ☒ C

S. Committee on Judiciary

Hearing Date(s) Jan 16 ☒ C

1-19 ☒ C

Jan 22 ☒ C

1-23 ☐ C

_____ ☐ C

Jan 23 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

SENATE FINAL STATUS

2/07	COMMITTEE REPORT--BILL PASSED		
2/12	2ND READING PASSED	24	21
2/14	3RD READING PASSED	40	9
	TRANSMITTED TO HOUSE		
2/18	REFERRED TO HUMAN SERVICES & AGING		
3/03	HEARING		
3/05	COMMITTEE REPORT--BILL CONCURRED		
3/07	2ND READING CONCURRED	86	8
3/07	REREFERRED TO APPROPRIATIONS		
3/18	HEARING		
3/18	TAKEN FROM COMMITTEE AND PLACED ON 3RD READING		
3/19	3RD READING CONCURRED	85	13
	RETURNED TO SENATE		
3/24	SIGNED BY PRESIDENT		
3/25	SIGNED BY SPEAKER		
3/25	TRANSMITTED TO GOVERNOR		
3/29	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 259 EFFECTIVE DATE: 10/01/87		

SB 18 INTRODUCED BY PINSONEAULT
REQUIRING PERSON KNOWLEDGEABLE ABOUT INDIAN AFFAIRS
ON FOSTER REVIEW COMMITTEES
BY REQUEST OF COMMITTEE ON INDIAN AFFAIRS

1/05	INTRODUCED		
1/05	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
1/14	HEARING		
1/15	COMMITTEE REPORT--BILL PASSED		
2/06	PLACED ON 2ND READING WITH SENATE BILL ON 2/12	49	0
2/12	2ND READING PASSED	50	0
2/14	3RD READING PASSED	44	4
	TRANSMITTED TO HOUSE		
2/18	REFERRED TO HUMAN SERVICES & AGING		
3/03	HEARING		
3/05	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/07	2ND READING CONCURRED	67	23
3/09	3RD READING CONCURRED	77	18
	RETURNED TO SENATE WITH AMENDMENTS		
3/20	2ND READING AMENDMENTS CONCURRED	49	0
3/21	3RD READING AMENDMENTS CONCURRED	41	0
3/24	SIGNED BY PRESIDENT		
3/25	SIGNED BY SPEAKER		
3/25	TRANSMITTED TO GOVERNOR		
3/29	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 260 EFFECTIVE DATE: 10/01/87		

SB 19 INTRODUCED BY AKLESTAD
RENEGOTIATION OF STATE EMPLOYEE COLLECTIVE
BARGAINING AGREEMENTS

1/05	INTRODUCED		
1/05	REFERRED TO LABOR & EMPLOYMENT RELATIONS DIED IN COMMITTEE		

SB 20 INTRODUCED BY HALLIGAN, THAYER, POULSEN, ET AL.
GENERALLY REVISE MECHANICS LIEN LAW

SENATE FINAL STATUS

BY REQUEST OF JOINT INTERIM SUBCOMMITTEE ON
LIEN LAWS

1/05 INTRODUCED
1/05 REFERRED TO JUDICIARY
1/09 SPONSORS ADDED
1/16 HEARING
1/24 COMMITTEE REPORT--BILL PASSED AS AMENDED
1/28 2ND READING PASSED 50 0
1/30 3RD READING PASSED 48 1

TRANSMITTED TO HOUSE
2/04 REFERRED TO BUSINESS & LABOR
2/12 REREFERRED TO JUDICIARY
3/12 HEARING
3/13 COMMITTEE REPORT--BILL CONCURRED
3/16 2ND READING CONCURRED 78 18
3/17 3RD READING CONCURRED 75 21

RETURNED TO SENATE
3/20 SIGNED BY PRESIDENT
3/21 SIGNED BY SPEAKER

3/21 TRANSMITTED TO GOVERNOR
3/25 SIGNED BY GOVERNOR
CHAPTER NUMBER 202 EFFECTIVE DATE: 10/01/87

SB 21 INTRODUCED BY STORY
TEMPORARY RULES FOR BILLS WITH EARLY EFFECTIVE DATES
BY REQUEST OF ADMINISTRATIVE CODE COMMITTEE

1/05 INTRODUCED
1/05 REFERRED TO STATE ADMINISTRATION
1/07 HEARING
1/08 COMMITTEE REPORT--BILL PASSED AS AMENDED
1/12 2ND READING PASSED 49 0
1/14 3RD READING PASSED 50 0

TRANSMITTED TO HOUSE
2/04 REFERRED TO STATE ADMINISTRATION
3/03 HEARING
3/03 COMMITTEE REPORT--BILL CONCURRED AS AMENDED
3/09 2ND READING CONCURRED AS AMENDED 93 4
3/11 3RD READING CONCURRED 92 4

RETURNED TO SENATE WITH AMENDMENTS
3/18 2ND READING AMENDMENTS CONCURRED 48 0
3/19 3RD READING AMENDMENTS CONCURRED 48 0
3/24 SIGNED BY PRESIDENT
3/25 SIGNED BY SPEAKER

3/25 TRANSMITTED TO GOVERNOR
3/29 SIGNED BY GOVERNOR
CHAPTER NUMBER 261 EFFECTIVE DATE: 3/29/87

SB 22 INTRODUCED BY VAN VALKENBURG, SMITH, C., THAYER, ET AL.
GENERALLY AMEND CAPITAL COMPANY ACT; AUTHORIZE TAX
CREDITS FOR 4 MORE YEARS

1/20 INTRODUCED
1/20 REFERRED TO TAXATION
1/20 FISCAL NOTE REQUESTED
1/28 FISCAL NOTE RECEIVED
1/29 HEARING

SENATE BILL NO. 20

INTRODUCED BY HALLIGAN, THAYER, POULSEN, MERCER, HAGER,
RASMUSSEN, BOYLAN, GAGE, WALLIN, D. BROWN

BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE ON LIEN LAWS

IN THE SENATE

JANUARY 5, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 9, 1987	ON MOTION BY CHIEF SPONSOR, SENATORS THAYER, HAGER, RASMUSSEN, BOYLAN, AND GAGE AND REPRESENTATIVES POULSEN, MERCER, WALLIN, AND D. BROWN ADDED AS SPONSORS.
JANUARY 24, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 26, 1987	PRINTING REPORT.
JANUARY 28, 1987	SECOND READING, DO PASS.
JANUARY 29, 1987	ENGROSSING REPORT.
JANUARY 30, 1987	THIRD READING, PASSED. AYES, 48; NOES, 1. TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 4, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & LABOR.
FEBRUARY 12, 1987	ON MOTION, REREFERRED TO COMMITTEE ON JUDICIARY.
MARCH 13, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 16, 1987	SECOND READING, CONCURRED IN.

MARCH 17, 1987

THIRD READING, CONCURRED IN.
AYES, 75; NOES, 21.

RETURNED TO SENATE.

IN THE SENATE

MARCH 18, 1987

RECEIVED FROM HOUSE.

SENT TO ENROLLING.

1 SENATE BILL NO. 20
2 INTRODUCED BY HALLIGAN
3 BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE ON LIEN LAWS
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
6 LAWS RELATING TO MECHANICS' LIENS; AMENDING SECTIONS
7 70-23-607, 70-23-608, 71-3-512, AND 71-3-516, MCA; REPEALING
8 SECTIONS 71-3-501 THROUGH 71-3-503, 71-3-511, AND 71-3-514,
9 MCA; AND PROVIDING AN APPLICABILITY DATE."
10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
12 NEW SECTION. Section 1. Scope. This part creates and
13 provides for the attachment and enforceability of a
14 construction lien against real estate in favor of a person
15 furnishing services or materials under a real estate
16 improvement contract. A nonconsensual lien against real
17 estate for improvements made thereon may not arise except as
18 provided in this part.
19 NEW SECTION. Section 2. Definitions. (1)
20 "Commencement of work" means the date of the first visible
21 change in the physical condition of the real estate caused
22 by the first person furnishing services or materials
23 pursuant to a particular real estate improvement contract.
24 (2) "Construction lien" or "lien" means a lien against
25 real estate arising under this part.

1 (3) (a) "Contracting owner" means a person who owns an
2 interest in real estate and who, personally or through an
3 agent, enters into an express or implied contract for the
4 improvement of the real estate.
5 (b) For the purpose of determining whether a person is
6 a contracting owner, agency is presumed, in the absence of
7 clear and convincing evidence to the contrary:
8 (i) between employer and employee;
9 (ii) between spouses;
10 (iii) between joint tenants; and
11 (iv) among tenants in common.
12 (4) (a) "Contract price" means the amount agreed upon
13 by the contracting parties for performing services and
14 furnishing materials covered by the contract, increased or
15 diminished by:
16 (i) the price of change orders or extras;
17 (ii) any amounts attributable to altered
18 specifications; or
19 (iii) a breach of contract, including but not limited
20 to defects in workmanship or materials.
21 (b) If no price is agreed upon by the contracting
22 parties, the contract price means the reasonable value of
23 all services or materials covered by the contract.
24 (5) (a) "Real estate improvement contract" means an
25 agreement to perform services, including labor, or to

furnish materials for the purpose of producing a change in the physical condition of the real estate, including:

(i) alteration of the surface by excavation, fill, change in grade, or change in a shore, bank, or flood plain of a stream, swamp, or body of water;

(ii) construction or installation on, above, or below the surface of land;

(iii) demolition, repair, remodeling, or removal of a structure previously constructed or installed;

(iv) seeding, sodding, or other landscape operation;

(v) surface or subsurface testing, boring, or analysis; and

(vi) preparation of plans, surveys, or architectural or engineering plans or drawings for any change in the physical condition of the real estate, regardless of whether they are used to produce a change in the physical condition of the real estate.

(b) For the purpose of claiming a construction lien, a real estate improvement contract does not include:

(i) a contract for the mining or removal of timber, minerals, gravel, soil, sod, or things growing on the land or a similar contract in which the activity is primarily for the purpose of making the materials available for sale or use; or

(ii) a contract for the planting, cultivation, or

harvesting of crops or for the preparation of the soil for planting of crops.

NEW SECTION. Section 3. Who may claim a construction lien -- limitation. A person who furnishes services or materials pursuant to a real estate improvement contract may claim a construction lien, only to the extent provided in this part, to secure the payment of his contract price.

NEW SECTION. Section 4. Limitation of lien for materials supplied. (1) A lien for furnishing materials arises only if:

(a) (i) the materials are supplied with the intent that they be used in the course of construction of or incorporated into the improvement in connection with which the lien arises; and

(ii) the intent described in subsection (1)(a)(i) can be shown by a contract of sale, a delivery order, delivery to the site by the lien claimant or at his direction, or by other evidence; and

(b) the materials are:

(i) incorporated in the improvement or consumed as normal wastage in construction operations;

(ii) specifically fabricated for incorporation into the improvement and not readily resalable in the ordinary course of the fabricator's business, even though the materials are not actually incorporated into the improvement;

(iii) used for the construction or operation of machinery or equipment used in the course of construction and not remaining in the improvement, subject to diminution by the salvage value of those materials; or

(iv) tools, appliances, or machinery used on the particular improvement. However, a lien for supplying tools, appliances, or machinery used on the improvement is limited as provided by subsection (3).

(2) The delivery of materials to the site of the improvement, whether by the lien claimant or by another, creates a presumption that they were used in the course of construction or were incorporated into the improvement.

(3) A lien arising for the supplying of tools, appliances, or machinery under subsection (1)(b)(iv) is limited as follows:

(a) if they are rented, the lien is for the reasonable rental value for the period of actual use, including any reasonable periods of nonuse provided for in the rental contract; and

(b) if they are purchased, the lien is for the price but arises only if they were purchased for use in the course of the particular improvement and have no substantial value after the completion of the improvement on which they were used.

NEW SECTION. Section 5. Extent of lien. (1) A

construction lien extends to the interest of the contracting owner in the real estate, as the interest exists at the commencement of work or is thereafter acquired in the real estate, subject to the provisions of this section.

(2) (a) If an improvement is located wholly on one or more platted lots belonging to the contracting owner, the lien applies to the improvement and to the lots on which the improvement is located.

(b) If an improvement is not located wholly on one or more platted lots, the lien applies to the improvement and to the smallest identifiable tract or parcel of land on which the improvement is located.

(3) If the improvement is to leased premises, the lien attaches to the improvement and to the leasehold term. Except as provided in subsection (4), it does not attach to the lessor's interest unless he contracted for or agreed to the improvement before it was begun.

(4) (a) A construction lien is not impaired to the extent of the value of the work or improvement that is severable from the real estate if the improvement is to premises held by:

(i) a contracting owner who owns less than a fee simple interest; or

(ii) a lessee and the lease is forfeited by the lessee.

(b) If the work or improvement may be removed without

1 harm to the rest of the real estate, the lienholder may have
2 the value determined, the work or improvement sold
3 separately, and the proceeds delivered to him to satisfy the
4 construction lien. The purchaser shall remove the work or
5 improvement within 45 days of the sale.

6 (5) If a contracting owner contracts for improvements
7 on real estate not owned by him as part of an improvement on
8 his real estate or for the purpose of directly benefitting
9 his real estate, there is a lien against the contracting
10 owner's real estate being improved or directly benefitted in
11 favor of persons furnishing services or materials to the
12 same extent as if the improvement had been on the
13 contracting owner's real estate.

14 NEW SECTION. Section 6. Amount of lien. (1) A person
15 who has furnished services or materials pursuant to a real
16 estate improvement contract is entitled to a lien for the
17 unpaid part of his contract price, subject to the provisions
18 of [section 4].

19 (2) A person's lien is reduced by the sum of the liens
20 of persons claiming construction liens through him.

21 NEW SECTION. Section 7. Notice of right to claim a
22 lien required -- exceptions. (1) The following are not
23 required to give notice of a right to claim a lien as
24 required by this section:

25 (a) a person who furnishes services or materials

1 directly to the owner at his request;

2 (b) a wage earner or laborer who performs personal
3 labor services for a person furnishing any service or
4 material pursuant to a real estate improvement contract;

5 (c) a person who furnishes services or materials
6 pursuant to a real estate improvement contract that relates
7 to a dwelling for five or more families; and

8 (d) a person who furnishes services or materials
9 pursuant to a real estate improvement contract that relates
10 to an improvement that is partly or wholly commercial in
11 character.

12 (2) A person who may claim a construction lien
13 pursuant to this part shall give notice of his right to
14 claim a lien to the contracting owner in order to claim a
15 lien.

16 (3) This notice must be given no later than 20 days
17 after the date on which the services or materials are first
18 furnished to the contracting owner. If notice is not given
19 within this period, a lien is enforceable only for the
20 services or materials furnished within the 20-day period
21 before the date on which notice is given.

22 (4) The notice of the right to claim a lien must be
23 sent to the contracting owner by certified mail or delivered
24 personally to him.

25 (5) A person who may claim a lien shall file with the

clerk and recorder of the county in which the improved real estate is located a copy of the notice of the right to claim a lien, in the form required by [section 8]. This copy must be filed no later than 20 days after the date on which the services or materials were first furnished to the contracting owner.

(6) At the request of any subcontractor or material supplier who may claim a lien through him, a person shall furnish to the requestor within 5 business days:

(a) a description of the real estate being improved, sufficient to identify it; and

(b) the name and address of the contracting owner.

NEW SECTION. Section 8. Content of notice of right to claim a lien. (1) The notice of the right to claim a lien must be in writing and state that it is a notice of a right to claim a lien against real estate for services or materials furnished in connection with improvement of the real estate.

(2) The notice must contain a description sufficient to identify the real estate against which the lien may be claimed.

(3) The notice must contain the following information and be in substantially the following form:

NOTICE OF THE RIGHT TO CLAIM A LIEN

WARNING: READ THIS NOTICE. PROTECT YOURSELF FROM PAYING ANY CONTRACTOR OR SUPPLIER TWICE FOR THE SAME SERVICE.

To:..... Date of mailing:

(Owner)

(Owner's address)

This is to inform you that has begun to provide (description of services or materials) ordered by for improvements to property you own. The property is located at

A lien may be claimed for all services and materials furnished to you, if this notice is given to you within 20 days after the date on which the services or materials described are first furnished to you. If the notice is not given within that time, a lien is enforceable for only the services or materials furnished within the 20-day period before the date on which the notice is given.

Even if you or your mortgage lender have made full payment to the contractor who ordered these services or materials, your property may still be subject to a lien unless the subcontractor or material supplier providing this notice is paid. THIS IS NOT A LIEN. It is a notice sent to you for your protection in compliance with the construction lien laws of the state of Montana.

This notice has been sent to you by:

NAME:..... IF YOU HAVE ANY
ADDRESS:..... QUESTIONS ABOUT THIS
TELEPHONE:..... NOTICE, PLEASE CALL US
IMPORTANT INFORMATION ON REVERSE SIDE

IMPORTANT INFORMATION FOR YOUR PROTECTION

Under Montana's laws, those who work on your property or provide materials and are not paid have a right to enforce their claim for payment against your property. This claim is known as a construction lien.

If your contractor fails to pay subcontractors or material suppliers or neglects to make other legally required payments, the people who are owed money may look to your property for payment, even if you have paid your contractor in full.

The law states that all people hired by a contractor to provide you with services or materials are required to give you a notice of the right to lien to let you know what they have provided.

WAYS TO PROTECT YOURSELF ARE:

-- RECOGNIZE that this notice of delivery of services or materials may result in a lien against your property unless all those supplying a notice of the right to lien have been paid.

-- LEARN more about the construction lien laws and the meaning of this notice by contacting an attorney or the firm sending this notice.

-- WHEN PAYING your contractor for services or materials, you may make checks payable jointly to the contractor and the firm furnishing services or materials for which you have received a notice of the right to lien.

-- OBTAIN EVIDENCE that all firms from whom you have received a notice of the right to lien have been paid or have waived the right to claim a lien against your property.

-- CONSULT an attorney, a professional escrow company, or your mortgage lender.

NEW SECTION. Section 9. Attachment of lien -- filing.

(1) A person's lien does not attach and may not be enforced unless, after entering into the contract under which the lien arises, he has filed a lien not later than 90 days after:

(a) his final furnishing of services or materials; or

(b) the owner files a notice of completion pursuant to 71-3-512.

(2) (a) The lien must be filed with the county clerk and recorder of the county in which the improved real estate is located.

(b) The person claiming the lien must certify to the county clerk and recorder that a copy of the lien has been

1 served on the owner of record as provided in 71-3-513(2).
 2 (3) The lien statement must contain:
 3 (a) the name and address of the person claiming the
 4 lien;
 5 (b) a description of the real property against which
 6 the lien is claimed sufficient to identify it;
 7 (c) the name of the contracting owner;
 8 (d) the name and address of the party with whom the
 9 person claiming the lien contracted to furnish services or
 10 materials;
 11 (e) a description of the services or materials
 12 provided;
 13 (f) the amount unpaid for services or materials or, if
 14 no amount is fixed by the contract, a good faith estimate of
 15 the amount unpaid, designated as an estimate;
 16 (g) (i) the date on which the services or materials
 17 were first furnished; and
 18 (ii) the date on which the services or materials were
 19 last furnished; and
 20 (h) a declaration that a notice of a right to claim a
 21 lien was given to the contracting owner or an explanation of
 22 why such notice was not required.
 23 (4) A lien notice that is filed pursuant to this
 24 section before the person claiming the lien has
 25 substantially furnished services or materials pursuant to a

1 real estate improvement contract is not effective to create
 2 a construction lien unless the lien claimant is prevented
 3 from fulfilling his obligation because of the fault of
 4 another person.
 5 (5) Except as provided in subsection (6), a lien
 6 attaches at the commencement of work as defined in [section
 7 2].
 8 (6) A lien attaches when it is filed if it is for the
 9 preparation of plans, surveys, or architectural or
 10 engineering plans or drawings for any change in the physical
 11 condition of land or structures that are not used incident
 12 to producing a change in the physical condition of the real
 13 estate.
 14 NEW SECTION. Section 10. Content of lien notice. The
 15 notice for the lien provided for in [section 9] may be filed
 16 in substantially this form:
 17 Construction Lien
 18 I, (insert name and address of person claiming
 19 the construction lien), claim a construction lien pursuant
 20 to Title 71, chapter 3, of the Montana Code Annotated.
 21 I claim this lien against (give description of
 22 the real property against which the lien is claimed
 23 sufficient to identify it). The contracting owner is
 24 (insert name of the person who owns the real estate and name
 25 of the person who entered into the contract to improve it).

At the request of (give name and address of party with whom person claiming the lien contracted to furnish services or materials), I provided the following: (give description of the services or materials provided). The amount remaining unpaid is (insert the amount unpaid; if no amount was fixed by the contract, give your good faith estimate of the amount and identify it as an estimate).

I first furnished these services or materials on (give date) and last furnished services or materials on (give date; if the date has not yet arrived, insert an estimate of the date on which services or materials will be last furnished and identify the date as an estimate).

I gave notice of the right to claim a lien as required by [section 7] on (give date) to (give name of contracting owner). . . . (If it is not required to give a notice of the right to claim a lien, state the reason it is not required.)

NEW SECTION. Section 11. Priority among holders of construction liens. (1) There is equal priority between or among construction lien claimants who contribute to the same real estate improvement project, regardless of the date on which each lien claimant first contributed services or materials and regardless of the date on which he filed his

notice of lien. When the proceeds of a foreclosure sale are not sufficient to pay all construction lien claimants in full, each claimant will receive a pro rata share of the proceeds based on the amount of his respective lien.

(2) Construction liens attaching at different times have priority in the order of attachment.

NEW SECTION. Section 12. Priority of construction liens as against claims other than construction lien claims. (1) A construction lien arising under this part has priority over any other interest, lien, mortgage, or encumbrance that may attach to the building, structure, or improvement or on the real property on which the building, structure, or improvement is located and which is filed after the construction lien attaches.

(2) An interest, lien, mortgage, or encumbrance that is filed before the construction lien attaches has priority over a construction lien arising under this part, except as provided in subsections (3) and (4).

(3) A construction lien has priority, to the extent of the value of the work or improvement that is severable, over an interest, lien, mortgage, or encumbrance that is filed before the construction lien attaches. If the work or improvement may be removed without harm to the rest of the real property, the lienholder may have the value determined, the work or improvement sold separately on foreclosure, and

1 the proceeds delivered to him to satisfy the construction
2 lien.

3 (4) A construction lien has priority over any
4 interest, lien, mortgage, or encumbrance that is filed
5 before the construction lien attaches if that interest,
6 lien, mortgage, or encumbrance was taken to secure advances
7 made for the purpose of paying for the particular real
8 estate improvement being liened.

9 Section 13. Section 71-3-512, MCA, is amended to read:

10 "71-3-512. Notice of completion. (1) The contracting
11 owner may file a notice of completion at any time after the
12 completion of any work or improvement.

13 (2) The following acts or events constitute completion
14 of any work or improvement for the purpose of filing a
15 notice of completion:

16 (a) the written acceptance by the contracting owner,
17 his agent, or representative of the building, improvement,
18 or structure. The filing of a notice of completion shall not
19 be considered as an acceptance of the building, improvement,
20 or other structure.

21 (b) the cessation from labor for 30 days upon any
22 building, improvement, or structure, or the alteration,
23 addition to, or repair thereof.

24 (3) The notice of completion together with an
25 affidavit of publication as hereinafter required shall be

1 filed in the office of the county clerk and recorder of the
2 county where the property is situated and the notice shall
3 set forth:

4 (a) the date when the work or improvement was
5 completed or the date on which cessation from labor occurred
6 first and the period of its duration;

7 (b) the contracting owner's name ~~or-owners+-names+-as~~
8 ~~the-case-may-be+-the~~ and address ~~of-the-owner--or--addresses~~
9 ~~of--the--owners+-as--the-case-may-be+-~~ and the nature of the
10 title, if any, of the person signing the notice;

11 (c) a description of the property sufficient for
12 identification;

13 (d) the name of the contractor, if any.

14 (4) The notice shall be verified by the contracting
15 owner or his agent.

16 (5) A copy of the notice of completion shall be
17 published once each week for 3 successive weeks in a
18 newspaper of general circulation in the county where the
19 land on which the work or improvement was performed is
20 situated.

21 (6) The contracting owner shall give a copy of the
22 notice of completion to any person who has given the
23 contracting owner a notice of a right to claim a lien."

24 Section 14. Section 71-3-516, MCA, is amended to read:

25 "71-3-516. Substitution of bond allowed -- filing --

1 amount -- condition. (1) Whenever a mechanic's construction
 2 lien has been filed upon real property or any improvements
 3 thereon, ~~as enumerated in 71-3-501~~, the contracting owner of
 4 any interest in such property, whether legal or beneficial,
 5 may, at any time before the lien claimant has commenced an
 6 action to foreclose such lien, file a bond with the clerk of
 7 the district court in the county in which such property is
 8 situated or, if such property is situated in more than one
 9 county, with the clerk of the district court of any county
 10 in which a part of such property is situated.

11 (2) Such bond shall be in an amount 1 1/2 times the
 12 amount of the lien and shall be either in cash or written by
 13 a corporate surety company. If written by a corporate
 14 surety, such bond shall be approved by a judge of the
 15 district court with which such bond is filed.

16 (3) The bond shall be conditioned that if the lien
 17 claimant shall be finally adjudged to be entitled to recover
 18 upon the claim upon which his lien is based, the principal
 19 or his sureties shall pay to such claimant the amount of his
 20 judgment, together with any interest, costs, attorneys'
 21 fees, and other sums which such claimant would be entitled
 22 to recover upon the foreclosure of a lien against the
 23 principal."

24 Section 15. Section 70-23-607, MCA, is amended to
 25 read:

1 "70-23-607. Claim for common expenses -- priority of
 2 lien -- contents -- recording. (1) Whenever an association
 3 of unit owners acting through its manager furnishes to a
 4 unit any services, labor, or material lawfully chargeable as
 5 common expenses, the association of unit owners, upon
 6 complying with subsection (2) of this section, shall have a
 7 lien upon the individual unit and the undivided interest in
 8 the common elements appertaining to such unit for the
 9 reasonable value of such common expenses, and the lien shall
 10 be prior to all other liens or encumbrances upon the unit
 11 except:

12 (a) tax and assessment liens; and

13 (b) a first mortgage or trust indenture of record.

14 (2) An association of unit owners claiming the
 15 benefits of subsection (1) of this section shall record in
 16 the county in which the unit or some part thereof is located
 17 a claim containing:

18 (a) a true statement of the account due for such
 19 common expenses after deducting all just credits and
 20 offsets;

21 (b) the name of the owner of the unit or reputed
 22 owner, if known;

23 (c) a description of the property where the common
 24 expenses were furnished and the designation of the unit,
 25 sufficient for identification.

1 (3) The claim shall be verified by the oath of some
2 person having knowledge of the facts and shall be filed with
3 and recorded by the recording officer in the book kept for
4 the purpose of recording liens filed under 71-3-501 Title
5 71, chapter 3, part 5. The record shall be indexed as deeds
6 and other conveyances are required by law to be indexed."

7 Section 16. Section 70-23-608, MCA, is amended to
8 read:

9 "70-23-608. Foreclosure of lien under claim for common
10 expenses -- action without foreclosure. (1) The proceedings
11 to foreclose liens created by 70-23-607 shall conform as
12 nearly as possible to the proceedings to foreclose liens
13 created by 71-3-501 Title 71, chapter 3, part 5. The lien
14 may be enforced by the manager acting on behalf of the
15 association of unit owners.

16 (2) An action to recover a money judgment for unpaid
17 common expenses may be maintained without foreclosing or
18 waiving the lien securing the claim for common expenses."

19 NEW SECTION. Section 17. Repealer. Sections 71-3-501
20 through 71-3-503, 71-3-511, and 71-3-514, MCA, are repealed.

21 NEW SECTION. Section 18. Codification instruction.
22 Sections 1 through 12 are intended to be codified as an
23 integral part of Title 71, chapter 3, part 5, and the
24 provisions of Title 71, chapter 3, part 5, apply to sections
25 1 through 12.

1 NEW SECTION. Section 19. Saving clause. This act does
2 not affect rights and duties that matured, penalties that
3 were incurred, or proceedings that were begun before the
4 effective date of this act.

5 NEW SECTION. Section 20. Severability. If a part of
6 this act is invalid, all valid parts that are severable from
7 the invalid part remain in effect. If a part of this act is
8 invalid in one or more of its applications, the part remains
9 in effect in all valid applications that are severable from
10 the invalid applications.

11 NEW SECTION. Section 21. Applicability. This act
12 applies to real estate improvement contracts made after
13 September 30, 1987.

-End-

15

CHAIRMAN--SEN. JOE MAZUREK
NORMAL SCHEDULE==> SITE: ROOM 325

DAYS: MON THRU FRI TIME: 10:00 A.M.

SECRETARY-MARY HUBER

---BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES-----	COMMITTEE ACTION-----	REFERRER TO COMM-----	DATE OUT-
SB0002	1/05	1/16		PASS AS AMENDED		1/19
HAGER, TOM			PROVIDING LIEN RIGHTS FOR PHYSICAL THERAPISTS AND OCCUPATIONAL THERAPISTS			
SB0011	1/05	1/07		DO PASS		1/07
MAZUREK, JOSEPH P.			EFFECT TRANSFER TO MINOR BY TRANSFERRING SECURITY TO CUSTODIAL ACCOUNT			
SB0016	1/05	1/16		PASS AS AMENDED		1/19
HALLIGAN, MIKE			REQUIRE PRESALE NOTICE TO OWNER OF SALE TO ENFORCE AGISTER, SERVICE LIEN			
SB0020	1/05	1/16		PASS AS AMENDED		1/23
HALLIGAN, MIKE			GENERALLY REVISE MECHANICS LIEN LAW			
SB0023	1/05	1/22		PASS AS AMENDED		1/23
HALLIGAN, MIKE			EXPAND OPEN MEETING LAW			
SB0024		1/06		PASS AS AMENDED		1/06
HALLIGAN, MIKE			ALLOW HEARSAY AT DEPENDENT AND NEGLECT INVES. AUTHORITY HEARINGS			
SB0024	12/31					1/06
HALLIGAN, MIKE			ALLOW HEARSAY AT DEPENDENT AND NEGLECT INVES. AUTHORITY HEARINGS			
SB0025		1/06		DO PASS		1/06
GAGE, DELWYN			REGULATION OF PARENTS GIVING THEIR CHILDREN ALCOHOLIC BEVERAGES			
SB0025	12/31					1/06
GAGE, DELWYN			REGULATION OF PARENTS GIVING THEIR CHILDREN ALCOHOLIC BEVERAGES			
SB0033	1/03	1/13		ADVERSE REPORT	Tabled 1/26 JUDICIARY Referred back	1/16
LYNCH, JOHN (J.D.)			RESTITUTION AND SERVICE TO STORE OR COMMUNITY BY SHOPLIFTERS			
SB0033	1/19			TABLED	Tabled 1/30 Referred back 1/14	1/16
LYNCH, JOHN (J.D.)			RESTITUTION AND SERVICE TO STORE OR COMMUNITY BY SHOPLIFTERS			

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

January 16, 1987

The eighth meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on January 16, 1987 by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members present.

CONSIDERATION OF SB 2: Senator Tom Hager of Senate District #48 told that this bill is the result of the lien law committee. He said physical and occupational therapists will get the benefits in judgments, settlements, and insurance proceeds, as physicians and nurses get.

PROPOSERS: Gary Lusin, licensed physical therapist from Bozeman testified for the bill (see Exhibit 1, written testimony).

Doris Luckman, representing the Joe O. Luckman Physical Therapy, a private practice in Great Falls, testified in support of the bill (see Exhibit 2, written testimony).

Lorin Wright, a physical therapists from Red Lodge, said his practice would improve the cash flow if this bill was a law.

Carol Barnes, physical therapist from Helena, supported SB 2 (see Exhibit 3, written testimony).

Mona Jamison, Montana Chapter of American Physical Therapy Association, felt this was an economic issue and these people should be entitled to reimbursement. She said they are professional medical people just like physicians and nurses. She asked other physical therapists to stand and identify themselves: Mary Mistal, Billings; Clay Edwards, Dillon; Mary Jo Lusin, Bozeman; Charlene Dallec, Great Falls.

Bonnie Tippy, Montana Chiropractic Association, supported SB 2 because these people provided services that should be reimbursed. She presented amendments to the bill (see Exhibit 4). She said these amendments would put all licensed health providers in this bill.

Mike H. Pardis of Helena, represented the Montana Chiropractic Association, explained the amendments (see Exhibit 5, written testimony).

Roger Tippy, Montana Dental Association, said the Dental Association agreed with the amendments from the Chiropractors. He said this extends the purpose of the bill, but does not change it.

OPPOSERS: None

received a letter from Chief Justice Turnage which stated there was a serious problem with the constitutionality of the agister's lien statutes when there is a sale of an individual's property. He said the statute provides for advertisement but no prior notice before the property is sold. Senator Halligan said we can't do that anymore. He pointed out on page 2 and page 3 of the bill that it sets out basic notice provisions that are in most civil procedure statutes (see Exhibit 6).

PROPOSERS: Bob Holding, Montana Association of Realtors, testified in support of SB 16.

OPPOSERS: None.

DISCUSSION ON SB 16: Senator Crippen asked Senator Halligan to explain what an agister is. Senator Halligan replied that if one wants to pasture someone else's livestock and if that owner of the livestock doesn't pay the individual, then in 30 days the individual can put a lien on the livestock. He said one then notifies the sheriff of the situation and he advertises the property to be sold.

Senator Mazurek asked about page 2, line 14 of the bill with concern about the notice. He felt it might be better to give notice and this is how and as long as you give notice, it is ok. He believed it should not be left open to interpretation to whether or not the particular method chosen is the best method. Mary McCue, staff attorney for the interim lien law committee said the person who performs services should have gotten a mailing address and if he did, then we would hope for actual service, but sometimes that can't be accomplished. She said she could see it needed more explaining. Senator Mazurek said that any time one uses the reasonable efforts requirements to find someone, it is subject to challenge.

Senator Bishop stated that anytime you put in "reasonably calculated" in statute you have a built in law suit because what is defined as "reasonable"

Senator Beck asked if one can't find the person to notify them of the sale, can you still sell it. Senator Halligan replied that on page 3, subsection (d) if you can't find the owner then give notice of a public sale in three public place in the county the property is in.

Senator Halligan closed.

CONSIDERATION OF SB 20: Senator Halligan opened the hearing on SB 20 by going through the bill section by section with the committee (see Exhibit 7).

PROPOSERS: Senator Tom Hager, Senate District #48, stated he was on the lien law committee and supported the bill.

Judiciary Committee
Minutes of the meeting
January 16, 1987
page 5

Irvin Dellinger, Executive Secretary of the Montana Building Material Dealers Association, Helena, commented that in the interim committee on this subject the Montana Lien Law Coalition, consisting of the Montana Home Builders Association, Montana Contractors Association, Montana Real Mix, National Electrical Contractors Association, Sheet Metal/Air Conditioners, FIB, and Montana Building Material Dealers, met with the subcommittee on liens to discuss this problem. He felt the people will be better alerted about potential liens even though this bill makes more work for the contractors. He handed out an amendment to the committee:

Page 9, line 6.

Following: "contracting owner."

Insert: "if the notice of a right to claim a lien is not given within the 20 day period, the copy must be filed not later than 10 days after the date on which the notice of a right to claim a lien is given."

Riley Johnson, Montana Home Builders, thanked the lien committee that worked on this bill. He handed out an amendment:

Page 12, line 4.

Strike: the entire paragraph, beginning with " WHEN PAYING your contractor. . ."

Page 12, line 10.

Following: "property"

Strike: ". "

Insert: ", or make checks payable jointly to the contractor and the firm furnishing services or materials for which you have received a notice of the right to lien."

He explained that if you are a contractor in Cut Bank and you buy your materials in Billings and a person gives a check to you and the supplier, you then have to drive all the way to Billings to get your second signature and then drive back to Cut Bank to put the money in the Bank. He said this amendment takes the "spotlight" off notification. He felt a lien waiver should be the first line of defense.

John Gordon, Kalispell Montana, representing himself, testified in support of the bill but did not agree with the Dellinger amendment.

Brad Walterskirchen, Valley Bank in Kalispell, testified the bill gets rid of the secret lien and that is the main problem. He commented that it will create more work for the lenders because they will have to search public records to see who has filed lien notices. He said if they over look someone that has filed, then their lien is subordinate to the construction lien, so it puts a little more pressure on the lenders. He stated the lenders are willing to go along with the bill because it makes sure no one is over looked. He said he disagreed with the Dellinger

amendments because if another 10 days are allowed, it gives the lenders 30 days to have to find the filing and it could be up to 60 days before the lenders are aware of the filing and by then the money might be gone. He felt the amendment should include not only notice of a lien given, but the filing.

John Cadby, Montana Banker's Association, commented that like a new car needs tuning, probably so does this bill by the 51st Legislature in two years. He stated the committee should handle this issue carefully, because it took sometime for both sides to balance with this bill. He urge passage of the bill.

Chip Erdmann, Montana League Financial Institutions, testified they will be back in two years if it doesn't work and he felt any amendments to the bill should not go so far as to upset the compromise that was created in the interim liens subcommittee.

JoAnne Peres, of Fort Benton, representing the Clerk and Recorders (MACR), supported the bill because it helps the home owner. She said many homeowners who come to the court house and find out there is a lien on the home are shocked. She said the bill does not upset their current fee structure.

William McCauley, Cut Bank Building Service, supported the bill (see Exhibit 8, written testimony).

Mark Meek, Front Street Glass of Helena, supported the bill because the notices seemed to be the best compromise that was presented. He stated that he has limitable resources to use in getting out these notices, but it was the best of the choices we had to deal with.

John Miller, of Bozeman representing the John Miller Construction, supported the bill in the amended form.

OPPONENTS: None

Senator Mazurek commended both sides for their work.

DISCUSSION ON SB 20: Senator Bishop felt the materials or services given in that first 20 days is not addressed in this bill on secret liens. Mr. Dellinger answered the material delivered today to the contractor, January 16, would not receive his statement until the end of the month, January 31st, and he would have up until the 10th of the next month to pay for that job. He stated that this person did not come in until the 12th of the month and the supplier finds out the bills are not paid for so he contacts the contractor, but the contractor says there is money coming in on the 15th of the month. He said the contractor does

not show up with the money. He said now the supplier has to give notice and it has to date back 20 days from the 15th of February but the materials were delivered on the 16th of January, so the notice probably would not have been given. He said most contractors of small projects said they would give notice the day of the first delivery.

Senator Bishop pointed out he has seen it many times in the past that home owners have no idea there is a secret lien against their property and would like to see in the bill a notice up front before anything is done. Mr. Gordon replied that he agreed and he said the first 20 days was deleted out of the notice because the majority of construction work takes longer than 20 days. He did not agree with the amendment that allows 10 more days to file because it extends the gap of getting money additional 10 days.

Senator Halligan explained that the 20 days was the shortest period used among other states. He said he felt most contractors put their notices out before 20 days are up.

Senator Crippen asked how would one handle pre-payments to a contractor in this bill. He said with this bill the money paid in the front part of the contract is not bothered, it is the back part of the contract that gets you in to trouble.

Senator Mazurek asked Mr. Dellinger to explain his amendment. Mr. Dellinger responded the amendment would allow a notice that is given on the 45th day to the owner to be given a few days extra to file with the clerk and recorder in case something comes up.

Riley Johnson asked that if you go into court, what time is the lien effective 20 days back. He said the mail service or a three day holiday might effect the day, but this does depend on the court's interpretation.

John Gordon believed it was not a necessary amendment because the bill already states that both the lien and filing have to happen somewhere in the 20 day period. He commented it doesn't make any difference when you file because if you don't file it within the first 20 days after you first deliver it, your lien is only good for 20 days before you have given, served and filed.

Senator Mazurek pointed out there is really not a 20 day period in which to give the notice to the owner because giving the notice and filing should start the 10th day, because there might be problems with the delivery of the notice. He asked if this is problem. Mr. Gordon said he does not see the necessity of the amendment because you have a gap period; there is nothing in the statute that says you have to wait until the 20th day. Senator Mazurek felt there should be a "window" between the time the notice is given to the owner and the time you file, so to

28

Judiciary Committee
Minutes of the meeting
January 16, 1987
page 8

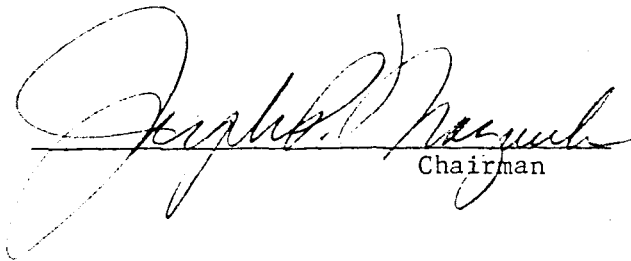
give the owner time to react to the notice. Mr. Gordon said there will not be action from the owner with a notice of intent to lien. He said the reason for filing is documenting for the purpose of the supplier.

Senator Halligan felt there should be some flexibility for legitimate contractors and subcontractors who deal with each other, who don't file their liens because they trust each other.

Mr. Waltherskirchen felt an amendment is needed because there is a search for the ones who didn't pay and his department needs a record of them. He commented if a notice is just given to the contracting owner, we would have no way of knowing, if he forgot to tell us. He said the result is the guy is not going to get paid, and we lose our lien position because we didn't pay the subcontractor. He felt three days is more reasonable than 10 for filing.

Senator Halligan closed by saying this is the best compromise the committee came up with to deal with double payment by the consumer.

The committee adjourned at 11:50 a.m.


Chairman

ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Jan. 16th 1987

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>	X		
<u>Senator Bruce Crippen, Vice Chairman</u>	X		
<u>Senator Tom Beck</u>	X		
<u>Senator Al Bishop</u>	X		
<u>Senator Chet Blavlock</u>	X		
<u>Senator Bob Brown</u>	X		
<u>Senator Jack Galt</u>	X		
<u>Senator Mike Halligan</u>	X		
<u>Senator Dick Pinsoneault</u>	X		
<u>Senator Bill Yellowtail</u>	X		

Each day attach to minutes.

Summary of SB 20: General Revision of Mechanics' Lien Statutes

Present law: Under the literal language of 71-3-501, mechanics' liens are available to any person performing work on or supplying materials for any construction project, regardless of such person's contractual relationship to the owner or prime contractor.

Liens are created by filing with the county clerk, within 90 days after the work has been performed or materials furnished:

- a. a verified description of the property to be charged;
- b. an account of the charges.

The owner may shorten the period of time in which a lien may be filed to 60 days by filing a notice of completion, either when the work has been accepted or 30 days after the cessation of all labor.

The lien attaches to the estate of the person for whose benefit the work was done, i.e., if such person is a mere lessee, to his leasehold only. However, if the leasehold is forfeited (presumably by default) the lien continues to attach to the improvements put in place by the lienholder. The improvements may be sold and removed to satisfy the lien.

As to priorities, the lien attaches to the building on which the work was done in preference to any prior lien or mortgage. The lien attaches to the land and takes priority over existing mortgages if:

- a. the work was done under a contract for the erection of a building or improvement; and
- b. the work was begun before the lien of the mortgage attached (even though the mechanics' lien was only filed later) after completion of the work.

The relative priority of mechanics' liens is by classes:

- a. all liens filed within 30 days of the first lien for work done on the same premises share equally, pro rata, with such first lien;
- b. all liens filed after such 30 days (if within 60 days of the first such lien filed) share equally, pro rata, in any proceeds that remain after all the liens of the first class are paid.

Provisions of SB 20: Who may claim a lien? A person who furnishes services or materials under a real estate improvement contract.

What is the extent of the lien? It extends to the interest of the contracting owner as it existed at the time the work was commenced or was thereafter acquired. As in the present law, if the improvement was to leased premises it attaches only to the lessee's leasehold interest and to the improvement if it can be severed from the property without harming the rest of the property.

24

What is the amount of the lien? As with the present law, it is for the unpaid portion of the contract price.

What are the requirements for claiming a lien? Except under certain circumstances, the lien claimant must give a notice of a right to claim a lien to the contracting owner within 20 days of first furnishing services or materials. This is a new requirement not presently in the law. The purpose of this notice is to alert the owner that he should protect himself from having to pay any contractor or supplier twice for the same service. The lien claimant also must file a lien not later than 90 days after he finally furnishes services or materials, or 90 days after the owner files a notice of completion under 71-3-512.

For purposes of priority, the lien attaches at the commencement of work on a particular real estate improvement project. Construction lien claimants working on the same real estate project share pro rata in the proceeds of a sale. If their construction liens attached at different times because they worked on different improvement projects they have priority in the order in which work on their particular improvement started.

With regard to priority of construction lien holders as against other claims, the construction lien claimant has priority over any lien filed after the construction lien attached, i.e., the start of the project. A lien filed before the construction lien attaches has priority except if:

- a. the particular improvement may be severed and sold to satisfy the construction lien without damaging the remainder of the property; or
- b. the other lien is for a construction loan, i.e., one given to secure advances to pay for that particular construction project.

NAME :

DATE: 1-15-87

ADDRESS :

PHONE :

REPRESENTING WHOM?

APPEARING ON WHICH PROPOSAL:

DO YOU:

SUPPORT?

AMEND?

OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

VISITORS' REGISTER

SENATE AND HOUSE COMMITTEE

BILL

SB20

DATE

Jan. 16th

SPONSOR

NAME	REPRESENTING	RESIDENCE	SUPPORT	OPPOS
James Pires	Clerks & Recorders (MACR)	Fort Benton	X	
John CARBY	MT BANKERS	HELENA	X	
Chip Erdmann	MT League Financial Inst	Helena	X	
Riley Johnson	Mont. Home Builders	Helena	X	
John Gordon	myself.	Kahispell	X	
William L. McCauley	Cut Bank Building Sincor	Cut Bank	X	
Kenneth Shalh	UBC	Helena	X	
BRAD WALTERS	GREEN VALLEY BANK	Kahispell	✓	
Mike Sether	U.B.C.	Helena	✓	
H S Hanson	MT Tech. Council	HELENA	✓	
JOHN L. MILLER	JOHN L. MILLER construction	BOZEMAN	✓	
Allen R. Rogers	Wood's Building Supply	Conan	✓	
Doyce K. Rogers	-	✓	✓	
Mike Wall	POWER TOWNSEND CO	Helena	✓	
HAL HAY	INTERMOUNTAIN LUNGER	HELENA	✓	
Jim Moore	Moore Construction	Helena	✓	
Mark Meek	Front Street Glass	Helena	✓	
Mike Whitcomb	UBC	Butte	✓	
Don Spillinger	MBMDA	Helena	✓	
Joe Dura	Poulsen's Inc.	MT Falls	✓	
Paul Doughton	Paulson's Inc.	Granger	✓	
Bob Pyper	Mont. Credit Union League	Helena	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

January 19, 1987

The ninth meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on January 19, 1987 by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All members were present.

CONSIDERATION OF SB 52: Representative Joan Miles of House District #45 introduced SB 52 for Senator Bob Brown because he was delayed. She said the bill will cost \$273,000 more in fiscal year 1988 and \$263,000 in fiscal year 1989. She said the current system is "File and Use", which allows the Insurance Commissioner to regulate insurance rates to insure that they are not inadequate, excessive, or unfairly discriminatory. She stated that the Insurance Commissioner doesn't have the staff or the money to do this. She explained that in the Governor's budget book on page S 24 the modified requests coming from the Commissioner's office has \$230,000 in fiscal year 1988 and \$223,000 in 1989 to implement the power they currently have. Representative Miles felt this program was underfunded because of the liability crisis. She said there is a bill in the House which raises insurance filing fees which will go to this insurance division. She explained that the fiscal note reflects the figure needed now; it is not just for the flex system, but for the office functions now. She explained "file and use" makes all insurers file the rates they are charging. She said then the Commissioner judges the rates. She pointed out that there are currently four ways insurance rates are set: 1) "Open Competition"; they don't even file with the State Commissioners. 2) "File and Use". 3) "Prior Approval"; they have to file and then receive approval before they implement the rates. 4) "Rate Setting"; the state agencies set the limitations on the rates. She said what this bill is a combination of the "File and Use" and "Prior Approval". She explained that it gives the Insurance Commissioner a zone of reasonableness so an insurance company could adjust its rates in this zone and not have to file with the Insurance Commissioner. She said they can work competitively and adjust their rates if necessary. She stated if they go below or above the zone, they have to get prior approval of the rates. She echoed this system would get the insurance companies to be competitive and increase consumer protection. She felt it will inform the public about prices of liability insurance. She thought the bill would avoid the early 1970's problem when the insurance industry engaged in "cash flow underwriting"; this covered poor risks at very low premiums, in order to generate enough funds to deposit in the high interest bearing accounts. She said there was a decline of interest rates, which reduced profits and caused part of the "sky rocketing" liability rates.

certain insurance fees with the hopes that they would earmark that into these programs, because this is not expected to come out of the general fund.

Adjourned to the table for executive action.

ACTION ON SB 49: Senator Beck asked if the Robischon amendments were really needed. Senator Mazurek responded that maybe it should be limited to charitable organizations. Senator Pinsoneault said he would like to see the conservation districts protected. Senator Mazurek commented the Tort Claims Act protects conservation districts. He also commented to the committee that they should stay away from the illegal acts part of this bill in the first section. He thought the committee should define "volunteer" for future litigation. Senator Mazurek then asked if this should be tax exempted like churches. The committee decided to wait on taking any action on the bill.

ACTION ON SB 16: Senator Pinsoneault moved:

Page 2, lines 14 through 16.

Following: "sale" on line 14

Strike: the remainder of line 14 through "sale" on line 16

The motion carried unanimously. Senator Pinsoneault moved the bill AS AMENDED DO PASS. The motion carried unanimously.

ACTION ON SB 2: Senator Mazurek stated that Roger Tippy said the committee should define "health care provider". Valencia Lane responded the "health care provider" is under Title 37 of the MCA. Senator Pinsoneault said he could see giving them filing rights because it is defined to groups. Senator Crippen felt other groups can amend themselves into the statute because no other groups spoke on this subject, so they must not feel strongly about this. Senator Brown thought the bill should have Chiropractors because they did come to the hearing. Senator Beck said they should come in with their own amendment to get into the bill. Senator Halligan responded they were not at the subcommittee when they worked on this bill. Senator Bishop moved to include the Chiropractors. Senator Mazurek asked what should be done with the dentist because they were represented at the Judiciary hearing. Senator Bishop withdrew his motion. Senator Halligan moved to have Chiropractors and Dentists included in the bill. The motion carried unanimously. Senator Halligan moved the bill AS AMENDED DO PASS. The motion carried with Chairman Mazurek voting no.

ACTION ON SB 20: Senator Mazurek stated the committee has to make sure the 20 days starts on the mailing date in this bill. Valencia said on page 8, line 16 through page 9, line 6, the owner can mail a notice on the 19th day after service, as long as he can prove it, and should still be effective. Senator Mazurek echoed that the statute should have the

Judiciary Committee
Minutes of the meeting
January 19, 1987
page 6

mailing date be the start of counting back. He felt the statute should state "deposit in the U.S. mail" in (3) on page 8. Senator Halligan moved:

Page 8, line 24.

Following: "him."

Insert: "Notice by certified mail in effective on the date the notice is mailed."

Page 8, line 25.

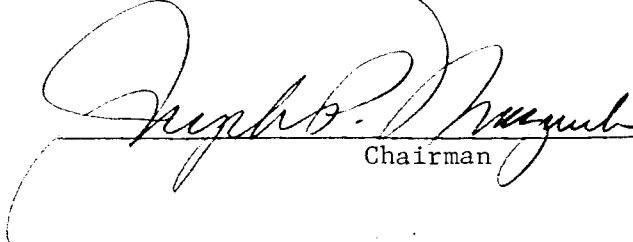
Following "shall"

Insert: "also"

Senator Bishop said we are just giving people notice of what the law is. The motion carried. Senator Halligan asked what is going to happen to the "good, trustful, friend" cases. Senator Mazurek stated if the supplier doesn't file the 20 day notice he can't claim a lien on that 20 days. He felt the committee should wait on action until the groups agreed on the time limit of notices. Senator Mazurek commented they should work on page 12, line 5. He said there should be a revision on the joint accounts because they don't want to run to different places to get signatures. Senator Halligan felt the problem was not a bad one.

ACTION ON SB 40: Senator Halligan stated the committee accidentally combined victim and family in this bill and the bill is getting more complicated because of the sexual offense part being brought into it. Senator Mazurek refreshed everyone's memory on this bill and what they had done with it so far. Senator Halligan moved to limit the services to only parents, brothers, or sisters (certain relatives). The motion carried. Senator Halligan moved the bill AS AMENDED DO PASS. The motion carried.

The committee adjourned at 12:00 p.m.


Chairman

ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Jan 19th

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>	✓		
<u>Senator Bruce Crippen, Vice Chairman</u>	✓		
<u>Senator Tom Beck</u>	✓		
<u>Senator Al Bishop</u>	✓		
<u>Senator Chet Blaylock</u>	✓		
<u>Senator Bob Brown</u>	X		X
<u>Senator Jack Galt</u>	X		
<u>Senator Mike Halligan</u>	X		
<u>Senator Dick Pinsoneault</u>	X		
<u>Senator Bill Yellowtail</u>	X		

came on 1/2 hour late

Each day attach to minutes.

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

January 22, 1987

The twelfth meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on January 22, 1987 by Chairman Joe Mazurek, in Room 325 of the state Capitol.

ROLL CALL: All members were present with the exception of Senators Galt and Pinsoneault, who were absent.

RECONSIDERATION OF SENATE BILL 23: Senator Halligan encouraged his amendments be accepted to Senate Bill 23, the open meeting law bill. He explained amendments 5, 7 and 8 on attached Exhibit 1. He said the bill now focuses on opening and assuring that meetings of associations of schools, like the MHSA, is specifically included in the open meeting law.

PROPOSERS: Gordon Morris, Montana Association of Counties, supported the bill because the Association of Counties is not brought into the bill in its amended form.

Nancy Newcomer, League of Women Voters of Montana, supported the amended bill.

Sandy Chaney, Women's Lobbyist Fund, supported the bill also. Written testimony attached as Exhibit 2.

Bruce W. Moerer, Montana School Board Association, stated he would like some clarification of SB 23. He said the Association wanted to know how they would notify people on a statewide basis of meetings. He explained there are statewide publications used by state agencies, but only state agencies can use them. He stated the Association questions their obligation to the law on who they notify and how, about a meeting, with the amended form of SB 23. He said MSBA would be glad to comply with it.

Kim Wilson, representing Common Cause, distributed a form which showed his amendments. Form attached as Exhibit 3. He supports the amended bill, but his changes make the language more consistent in sections 2-3-201 MCA through

Administration, through Mike Young, the administrator of the division, agreed with this concept. He said the auditor's office is looking for controls in the system and he felt there should be a limit on the dollar amount in this bill, but questioned the \$25,000 dollar limit because of the caseload at that level.

OPPONENTS: There were no opponents.

DISCUSSION ON SENATE BILL 112: Senator Blaylock questioned if there would be problems putting the limit at \$10,000. Mr. Maynard responded \$10,000 would put them at a caseload of 24 a year, and there was no problem with that.

Senator Bishop inquired what sort of procedure does the district court judge use. Mr. Maynard told the committee the judge usually signs a form and testimony is not presented.

Senator Halligan asked if there is a review of the settlements before they are final. Mr. Maynard stated the state adjustor in their office has the authority up to \$5,000, but any settlement over that has to be approved by the administrator. He said all of these settlements are public record.

Senator Mazurek closed the hearing on Senate Bill 112.

EXECUTIVE ACTION ON SENATE BILL 20: Senator Mazurek explained an example of a lumber salesman who has to give a 20 day notice to a job site before he can get a lien on the materials he has sold to the foreman of the job. He said the lumber salesman lets the notice go for 60 days, so he can only go back the last 20 days to reclaim any materials, so the lumber salesman lost the lien right on the first 40 days. Senator Mazurek stated on page 18, lines 12-18 shows without a doubt that one has to give the buyer 20 days notice before one can take a lien. Notice must be verified by the "contracting owner" and a copy of the notice of completion is published once a week for three consecutive weeks in newspapers.

Senator Crippen said the problem is the filing of the lien on page 9 of the bill. He felt the bill is not stating the same procedures in different parts of the bill. Senator Mazurek said the bill doesn't take away the right to claim a lien if it passes the 20 day mark, but it doesn't clearly set forth the way or time for filing a lien with the clerk and recorders office. No action was taken.

ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Jan. 22nd 1987

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>	X		
<u>Senator Bruce Crippen, Vice Chairman</u>	X		
<u>Senator Tom Beck</u>	✓		
<u>Senator Al Bishop</u>	X		
<u>Senator Chet Blaylock</u>	X		
<u>Senator Bob Brown</u>	X		
<u>Senator Jack Galt</u>	Excused		
<u>Senator Mike Halligan</u>	X		
<u>Senator Dick Pinsoneault</u>	Excused		
<u>Senator Bill Yellowtail</u>	X		

Each day attach to minutes.

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

January 23, 1987

The thirteenth meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on January 23, 1987 by Vice Chairman Bruce Crippen in Room 325 of the Capitol Building.

ROLL CALL: Senators Joe Mazurek and Bob Brown were late for the meeting and Senator Jack Galt was excused.

CONSIDERATION OF SB 119: Senator Cecil Weeding of Senate District #14 opened the hearing on SB 119 by saying the bill amends the Plain Language in Contracts Act to exempt all insurance policies from the Act, which requires all consumer contracts to be in "plain language". These policies are exempt from the Act because they are subject to the "Life and Disability Insurance Language Simplification Act" in the Insurance Code.

PROPOSERS: Les Loble of the American Council of Life Insurance gave out a hand out of the sections of 33-15-316 through 33-15-324 of the Contracts Act which involves insurance companies application exceptions. He said he agreed there were no problems with section 33-15-324 (see Exhibit 1).

Robert Throssett, from the State Auditor's Office, supported the bill (see Exhibit 2, written testimony).

Bonnie Tippy, American Insurers, said the organization supports the bill.

OPPOSERS: None

DISCUSSION ON SB 119: None

Senator Weeding closed.

ACTION ON SB 119: Vice Chairman Crippen said the committee should take action on SB 119. Senator Blaylock moved SB 119 DO PASS. The motion carried unanimously.

CONSIDERATION OF SB 114: Senator Gene Thayer of Senate District #19 introduced SB 114 as a housekeeping bill because it clarifies the filing of agricultural liens and termination statements of such liens to the Secretary of State's office and with the Clerk and Recorder's Office. He said it will provide a filing, instead of a copy at the state level.

PROPOSERS: Larry Avey of the Secretary of State's Office said this

from Gib Goodman, representative of Montana Grain Elevator Association (see Exhibit 3, written testimony).

The committee adjourned the hearings for executive action.

ACTION ON SB 52: Senator Brown stated the recording of insurance rates, presently, is unfunctionable. He said for the bill to work, there will have to be more F.T.E.'s apportioned. Senator Brown explained that the hearing schedule in the bill is only set when a rate is lower or higher than the band set by the State Auditor. Senator Crippen commented Montana is a different state than New York, and asked the committee to wait and see what this system will do in other states. He commented the entire Legislature will not be happy with the committee if they added a half a million into the general fund for extra F.T.E.'s. Senator Yellowtail had no problem with the insurance company attending a hearing to justify their rate settings. Senator Crippen said the present file and rate system can approve rates. Senator Brown moved to TABLE SB 52, because he felt the committee couldn't accept the fiscal note of SB 52. Senator Yellowtail said that if this system is not in place, than the consumers will pay for it. Senator Mazurek pointed out that what the state has now, the state can "limp" along with, because it is funded, but if the new system passed, than the Legislature is looking at more funding. Senator Brown said he would ask the Insurance Commissioner how much money he would need to get by if this bill went into action. Senator Beck thought if the Legislature would give the present system enough money that it might work better. The motion carried to TABLE SB 52 (see ROLL CALL VOTE SHEET).

ACTION ON SB 20: Senator Halligan gave the committee amendments prepared by Valencia Lane (see Exhibit 4). Senator Halligan explained that the committee had already made some changes in the bill (see standing committee report, amendments #1 and #2, January 19, 1987). Mr. George Bennett, Montana Banker Association, commented on the amendment that was given today. He felt the lien should start the day the lien is filed with the Clerk and Recorder. He said the proposed amendment gives five more days to a 20 day lien notices. He felt the notice days of the lien should be shorten to 15 days if this amendment goes through. Senator Halligan said the consumer should be the one that knows about the lien first. Senator Brown moved the amendment that Senator Halligan presented today. The motion carried.

Senator Halligan moved the bill DO PASS AS AMENDED. The motion carried.

ACTION ON SB 23: Valencia Lane handed the committee amendments and a gray bill (see Exhibit 5 and 6). Senator Halligan stated the amendments eliminated the Montana School Board Association's involvement in this bill. Senator Mazurek had concern about the word "affect" in amendment 8, because school boards may not regulate, but they have an effect on

212

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Jan. 23rd

NAME	PRESENT	ABSENT	EXCUSED
Senator Joe Mazurek, Chairman			
Senator Bruce Crippen, Vice Chairman	X		
Senator Tom Beck	X		
Senator Al Bishop	X		
Senator Chet Blaylock	X		
Senator Bob Brown			
Senator Jack Galt			
Senator Mike Halligan	X		
Senator Dick Pinsoneault	X		
Senator Bill Yellowtail	X		

Each day attach to minutes.

Amendments to SB 20
Introduced (white) copy
prepared for Sen. Halligan

1. ~~Page 8, line 25.~~
Following: "lien"
Insert: "also"
2. Page 9, lines 4 through 6.
Following: "than" on line 4
Strike: remainder of line 4 through line 6 in their entirety
Insert: "5 business days after the date on which the notice
of the right to claim a lien is given to the contracting
owner."

STANDING COMMITTEE REPORT

January 23

67

19.....

MR. PRESIDENT

SENATE JUDICIARY

We, your committee on.....

SENATE BILL

No. 20

having had under consideration.....

first

reading copy (

white

)
color

Generally revise mechanics' lien law.

SENATE BILL

20

Respectfully report as follows: That.....

No.....

1. Page 3, line 24.

Following: "him."

Insert: "Notice by certified mail ~~is~~ effective on the date the notice is mailed."

2. Page 3, line 25.

Following: "shall"

Insert: "also"

3. Page 9, lines 4 through 6.

Following: "than" on line 4

Strike: remainder of line 4 through line 6 in their entirety

Insert: "5 business days after the date on which the notice of the right to claim a lien is given to the contracting owner."

7923e/L:JEA/WP:jj

AND AS AMENDED

DO PASS

~~XXXXXXXXXX~~
DO NOT PASS

Chairman.

Total 10

Excused: Neuman.

Total 1

Absent or not voting: Boylan.

Total 1

Senator Van Valkenburg moved that the committee rise and report. Motion carried. Committee arose. Senate resumed. Mr. President in the Chair. Chairman Boylan moved the adoption of the committee report. Report adopted.

THIRD READING OF BILLS

The following bills having been read three several times, title and history agreed to, were disposed of in the following manner:

SB 3 failed to pass as follows:

Ayes: Aklestad, Anderson, Beck, Crippen, Farrell, Gage, Galt, Hammond, Harding, Hofman, Keating, Kolstad, McCallum, McLane, Meyer, Rasmussen, Smith, Story, Thayer, Tveit.

Total 20

Noes: Abrams, Bengtson, Bishop, Blaylock, Boylan, Brown, Eck, Haffey, Hager, Halligan, Himsl, Hirsch, Jacobson, Jergeson, Lybeck, Lynch, Manning, Mazurek, Pinsoneault, Regan, Severson, Stimatz, Van Valkenburg, Vaughn, Walker, Weeding, Williams, Yellowtail, Mr. President.

Total 29

Excused: Neuman.

Total 1

Absent or not voting: None.

Total 0

SB 20 passed as follows:

Ayes: Abrams, Aklestad, Anderson, Beck, Bengtson, Bishop, Blaylock, Boylan, Brown, Crippen, Eck, Gage, Galt, Haffey, Hager, Halligan, Hammond, Harding, Himsl, Hirsch, Hofman, Jacobson, Jergeson, Keating, Kolstad, Lybeck, Lynch, Manning, Mazurek, McCallum, McLane, Meyer, Pinsoneault, Rasmussen, Regan, Severson, Smith, Stimatz, Story, Thayer, Tveit, Van Valkenburg, Vaughn, Walker, Weeding, Williams, Yellowtail, Mr. President.

Total 48

Noes: Farrell.

Total 1

Excused: Neuman.

Total 1

Absent or not voting: None.

Total 0

SB 23 passed as follows:

Ayes: Abrams, Aklestad, Anderson, Beck, Bengtson, Bishop, Blaylock, Boylan, Brown, Crippen, Eck, Farrell, Gage, Galt, Haffey, Hager, Halligan, Harding, Himsl, Hirsch, Hofman, Jacobson, Jergeson, Keating, Kolstad, Lybeck, Lynch, Manning, Mazurek, McCallum, McLane, Meyer, Pinsoneault, Rasmussen, Regan, Severson, Smith, Stimatz, Story, Tveit,

SENATE BILL NO. 20

INTRODUCED BY HALLIGAN, THAYER, POULSEN, MERCER, HAGER,

RASMUSSEN, BOYLAN, GAGE, WALLIN, D. BROWN

BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE ON LIEN LAWS

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO MECHANICS' LIENS; AMENDING SECTIONS 70-23-607, 70-23-608, 71-3-512, AND 71-3-516, MCA; REPEALING SECTIONS 71-3-501 THROUGH 71-3-503, 71-3-511, AND 71-3-514, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Scope. This part creates and provides for the attachment and enforceability of a construction lien against real estate in favor of a person furnishing services or materials under a real estate improvement contract. A nonconsensual lien against real estate for improvements made thereon may not arise except as provided in this part.

NEW SECTION. Section 2. Definitions. (1) "Commencement of work" means the date of the first visible change in the physical condition of the real estate caused by the first person furnishing services or materials pursuant to a particular real estate improvement contract.

(2) "Construction lien" or "lien" means a lien against

real estate arising under this part.

(3) (a) "Contracting owner" means a person who owns an interest in real estate and who, personally or through an agent, enters into an express or implied contract for the improvement of the real estate.

(b) For the purpose of determining whether a person is a contracting owner, agency is presumed, in the absence of clear and convincing evidence to the contrary:

(i) between employer and employee;

(ii) between spouses;

(iii) between joint tenants; and

(iv) among tenants in common.

(4) (a) "Contract price" means the amount agreed upon by the contracting parties for performing services and furnishing materials covered by the contract, increased or diminished by:

(i) the price of change orders or extras;

(ii) any amounts attributable to altered specifications; or

(iii) a breach of contract, including but not limited to defects in workmanship or materials.

(b) If no price is agreed upon by the contracting parties, the contract price means the reasonable value of all services or materials covered by the contract.

(5) (a) "Real estate improvement contract" means an

THIRD READING

1 agreement to perform services, including labor, or to
2 furnish materials for the purpose of producing a change in
3 the physical condition of the real estate, including:

4 (i) alteration of the surface by excavation, fill,
5 change in grade, or change in a shore, bank, or flood plain
6 of a stream, swamp, or body of water;

7 (ii) construction or installation on, above, or below
8 the surface of land;

9 (iii) demolition, repair, remodeling, or removal of a
10 structure previously constructed or installed;

11 (iv) seeding, sodding, or other landscape operation;

12 (v) surface or subsurface testing, boring, or
13 analysis; and

14 (vi) preparation of plans, surveys, or architectural or
15 engineering plans or drawings for any change in the physical
16 condition of the real estate, regardless of whether they are
17 used to produce a change in the physical condition of the
18 real estate.

19 (b) For the purpose of claiming a construction lien, a
20 real estate improvement contract does not include:

21 (i) a contract for the mining or removal of timber,
22 minerals, gravel, soil, sod, or things growing on the land
23 or a similar contract in which the activity is primarily for
24 the purpose of making the materials available for sale or
25 use; or

1 (ii) a contract for the planting, cultivation, or
2 harvesting of crops or for the preparation of the soil for
3 planting of crops.

4 NEW SECTION. Section 3. Who may claim a construction
5 lien -- limitation. A person who furnishes services or
6 materials pursuant to a real estate improvement contract may
7 claim a construction lien, only to the extent provided in
8 this part, to secure the payment of his contract price.

9 NEW SECTION. Section 4. Limitation of lien for
10 materials supplied. (1) A lien for furnishing materials
11 arises only if:

12 (a) (i) the materials are supplied with the intent
13 that they be used in the course of construction of or
14 incorporated into the improvement in connection with which
15 the lien arises; and

16 (ii) the intent described in subsection (1)(a)(i) can
17 be shown by a contract of sale, a delivery order, delivery
18 to the site by the lien claimant or at his direction, or by
19 other evidence; and

20 (b) the materials are:

21 (i) incorporated in the improvement or consumed as
22 normal wastage in construction operations;

23 (ii) specifically fabricated for incorporation into the
24 improvement and not readily resalable in the ordinary course
25 of the fabricator's business, even though the materials are

43

1 not actually incorporated into the improvement;

2 (iii) used for the construction or operation of

3 machinery or equipment used in the course of construction

4 and not remaining in the improvement, subject to diminution

5 by the salvage value of those materials; or

6 (iv) tools, appliances, or machinery used on the

7 particular improvement. However, a lien for supplying

8 tools, appliances, or machinery used on the improvement is

9 limited as provided by subsection (3).

10 (2) The delivery of materials to the site of the

11 improvement, whether by the lien claimant or by another,

12 creates a presumption that they were used in the course of

13 construction or were incorporated into the improvement.

14 (3) A lien arising for the supplying of tools,

15 appliances, or machinery under subsection (1)(b)(iv) is

16 limited as follows:

17 (a) if they are rented, the lien is for the reasonable

18 rental value for the period of actual use, including any

19 reasonable periods of nonuse provided for in the rental

20 contract; and

21 (b) if they are purchased, the lien is for the price

22 but arises only if they were purchased for use in the course

23 of the particular improvement and have no substantial value

24 after the completion of the improvement on which they were

25 used.

1 NEW SECTION. Section 5. Extent of lien. (1) A

2 construction lien extends to the interest of the contracting

3 owner in the real estate, as the interest exists at the

4 commencement of work or is thereafter acquired in the real

5 estate, subject to the provisions of this section.

6 (2) (a) If an improvement is located wholly on one or

7 more platted lots belonging to the contracting owner, the

8 lien applies to the improvement and to the lots on which the

9 improvement is located.

10 (b) If an improvement is not located wholly on one or

11 more platted lots, the lien applies to the improvement and

12 to the smallest identifiable tract or parcel of land on

13 which the improvement is located.

14 (3) If the improvement is to leased premises, the lien

15 attaches to the improvement and to the leasehold term.

16 Except as provided in subsection (4), it does not attach to

17 the lessor's interest unless he contracted for or agreed to

18 the improvement before it was begun.

19 (4) (a) A construction lien is not impaired to the

20 extent of the value of the work or improvement that is

21 severable from the real estate if the improvement is to

22 premises held by:

23 (i) a contracting owner who owns less than a fee

24 simple interest; or

25 (ii) a lessee and the lease is forfeited by the lessee.

1 (b) If the work or improvement may be removed without
2 harm to the rest of the real estate, the lienholder may have
3 the value determined, the work or improvement sold
4 separately, and the proceeds delivered to him to satisfy the
5 construction lien. The purchaser shall remove the work or
6 improvement within 45 days of the sale.

7 (5) If a contracting owner contracts for improvements
8 on real estate not owned by him as part of an improvement on
9 his real estate or for the purpose of directly benefitting
10 his real estate, there is a lien against the contracting
11 owner's real estate being improved or directly benefitted in
12 favor of persons furnishing services or materials to the
13 same extent as if the improvement had been on the
14 contracting owner's real estate.

15 NEW SECTION. Section 6. Amount of lien. (1) A person
16 who has furnished services or materials pursuant to a real
17 estate improvement contract is entitled to a lien for the
18 unpaid part of his contract price, subject to the provisions
19 of [section 4].

20 (2) A person's lien is reduced by the sum of the liens
21 of persons claiming construction liens through him.

22 NEW SECTION. Section 7. Notice of right to claim a
23 lien required -- exceptions. (1) The following are not
24 required to give notice of a right to claim a lien as
25 required by this section:

1 (a) a person who furnishes services or materials
2 directly to the owner at his request;

3 (b) a wage earner or laborer who performs personal
4 labor services for a person furnishing any service or
5 material pursuant to a real estate improvement contract;

6 (c) a person who furnishes services or materials
7 pursuant to a real estate improvement contract that relates
8 to a dwelling for five or more families; and

9 (d) a person who furnishes services or materials
10 pursuant to a real estate improvement contract that relates
11 to an improvement that is partly or wholly commercial in
12 character.

13 (2) A person who may claim a construction lien
14 pursuant to this part shall give notice of his right to
15 claim a lien to the contracting owner in order to claim a
16 lien.

17 (3) This notice must be given no later than 20 days
18 after the date on which the services or materials are first
19 furnished to the contracting owner. If notice is not given
20 within this period, a lien is enforceable only for the
21 services or materials furnished within the 20-day period
22 before the date on which notice is given.

23 (4) The notice of the right to claim a lien must be
24 sent to the contracting owner by certified mail or delivered
25 personally to him. NOTICE BY CERTIFIED MAIL IS EFFECTIVE ON

THE DATE THE NOTICE IS MAILED.

(5) A person who may claim a lien shall ALSO file with the clerk and recorder of the county in which the improved real estate is located a copy of the notice of the right to claim a lien, in the form required by [section 8]. This copy must be filed no later than ~~20-days-after-the-date-on-which the-services--or--materials--were--first--furnished--to--the contracting--owner.~~ 5 BUSINESS DAYS AFTER THE DATE ON WHICH THE NOTICE OF THE RIGHT TO CLAIM A LIEN IS GIVEN TO THE CONTRACTING OWNER.

(6) At the request of any subcontractor or material supplier who may claim a lien through him, a person shall furnish to the requestor within 5 business days:

(a) a description of the real estate being improved, sufficient to identify it; and

(b) the name and address of the contracting owner.

NEW SECTION. Section 8. Content of notice of right to claim a lien. (1) The notice of the right to claim a lien must be in writing and state that it is a notice of a right to claim a lien against real estate for services or materials furnished in connection with improvement of the real estate.

(2) The notice must contain a description sufficient to identify the real estate against which the lien may be claimed.

(3) The notice must contain the following information and be in substantially the following form:

NOTICE OF THE RIGHT TO CLAIM A LIEN

WARNING: READ THIS NOTICE. PROTECT YOURSELF FROM PAYING ANY CONTRACTOR OR SUPPLIER TWICE FOR THE SAME SERVICE.

To:..... Date of mailing:

(Owner)

(Owner's address)

This is to inform you that has begun to provide (description of services or materials) ordered by for improvements to property you own. The property is located at

A lien may be claimed for all services and materials furnished to you, if this notice is given to you within 20 days after the date on which the services or materials described are first furnished to you. If the notice is not given within that time, a lien is enforceable for only the services or materials furnished within the 20-day period before the date on which the notice is given.

Even if you or your mortgage lender have made full payment to the contractor who ordered these services or materials, your property may still be subject to a lien unless the subcontractor or material supplier providing this notice is paid. THIS IS NOT A LIEN. It is a notice sent to

1 you for your protection in compliance with the construction
2 lien laws of the state of Montana.

3 This notice has been sent to you by:

4 NAME:..... IF YOU HAVE ANY
5 ADDRESS:..... QUESTIONS ABOUT THIS
6 TELEPHONE:..... NOTICE, PLEASE CALL US

7 IMPORTANT INFORMATION ON REVERSE SIDE

8
9 IMPORTANT INFORMATION FOR YOUR PROTECTION

10 Under Montana's laws, those who work on your property
11 or provide materials and are not paid have a right to
12 enforce their claim for payment against your property. This
13 claim is known as a construction lien.

14 If your contractor fails to pay subcontractors or
15 material suppliers or neglects to make other legally
16 required payments, the people who are owed money may look to
17 your property for payment, even if you have paid your
18 contractor in full.

19 The law states that all people hired by a contractor to
20 provide you with services or materials are required to give
21 you a notice of the right to lien to let you know what they
22 have provided.

23 WAYS TO PROTECT YOURSELF ARE:

24 -- RECOGNIZE that this notice of delivery of services
25 or materials may result in a lien against your property

1 unless all those supplying a notice of the right to lien
2 have been paid.

3 -- LEARN more about the construction lien laws and the
4 meaning of this notice by contacting an attorney or the firm
5 sending this notice.

6 -- WHEN PAYING your contractor for services or
7 materials, you may make checks payable jointly to the
8 contractor and the firm furnishing services or materials for
9 which you have received a notice of the right to lien.

10 -- OBTAIN EVIDENCE that all firms from whom you have
11 received a notice of the right to lien have been paid or
12 have waived the right to claim a lien against your property.

13 -- CONSULT an attorney, a professional escrow company,
14 or your mortgage lender.

15 NEW SECTION. Section 9. Attachment of lien -- filing.

16 (1) A person's lien does not attach and may not be enforced
17 unless, after entering into the contract under which the
18 lien arises, he has filed a lien not later than 90 days
19 after:

20 (a) his final furnishing of services or materials; or
21 (b) the owner files a notice of completion pursuant to
22 71-3-512.

23 (2) (a) The lien must be filed with the county clerk
24 and recorder of the county in which the improved real estate
25 is located.

1 (b) The person claiming the lien must certify to the
2 county clerk and recorder that a copy of the lien has been
3 served on the owner of record as provided in 71-3-513(2).

4 (3) The lien statement must contain:

5 (a) the name and address of the person claiming the
6 lien;

7 (b) a description of the real property against which
8 the lien is claimed sufficient to identify it;

9 (c) the name of the contracting owner;

10 (d) the name and address of the party with whom the
11 person claiming the lien contracted to furnish services or
12 materials;

13 (e) a description of the services or materials
14 provided;

15 (f) the amount unpaid for services or materials or, if
16 no amount is fixed by the contract, a good faith estimate of
17 the amount unpaid, designated as an estimate;

18 (g) (i) the date on which the services or materials
19 were first furnished; and

20 (ii) the date on which the services or materials were
21 last furnished; and

22 (h) a declaration that a notice of a right to claim a
23 lien was given to the contracting owner or an explanation of
24 why such notice was not required.

25 (4) A lien notice that is filed pursuant to this

1 section before the person claiming the lien has
2 substantially furnished services or materials pursuant to a
3 real estate improvement contract is not effective to create
4 a construction lien unless the lien claimant is prevented
5 from fulfilling his obligation because of the fault of
6 another person.

7 (5) Except as provided in subsection (6), a lien
8 attaches at the commencement of work as defined in [section
9 2].

10 (6) A lien attaches when it is filed if it is for the
11 preparation of plans, surveys, or architectural or
12 engineering plans or drawings for any change in the physical
13 condition of land or structures that are not used incident
14 to producing a change in the physical condition of the real
15 estate.

16 NEW SECTION. Section 10. Content of lien notice. The
17 notice for the lien provided for in [section 9] may be filed
18 in substantially this form:

19 Construction Lien

20 I, (insert name and address of person claiming
21 the construction lien), claim a construction lien pursuant
22 to Title 71, chapter 3, of the Montana Code Annotated.

23 I claim this lien against (give description of
24 the real property against which the lien is claimed
25 sufficient to identify it). The contracting owner is

48

1 (insert name of the person who owns the real estate and name
2 of the person who entered into the contract to improve it).

3 At the request of (give name and address of
4 party with whom person claiming the lien contracted to
5 furnish services or materials), I provided the following:
6 (give description of the services or materials
7 provided). The amount remaining unpaid is (insert
8 the amount unpaid; if no amount was fixed by the contract,
9 give your good faith estimate of the amount and identify it
10 as an estimate).

11 I first furnished these services or materials on
12 (give date) and last furnished services or materials
13 on (give date; if the date has not yet arrived,
14 insert an estimate of the date on which services or
15 materials will be last furnished and identify the date as an
16 estimate).

17 I gave notice of the right to claim a lien as required
18 by [section 7] on (give date) to (give name
19 of contracting owner). . . . (If it is not required to
20 give a notice of the right to claim a lien, state the reason
21 it is not required.)

22 NEW SECTION. Section 11. Priority among holders of
23 construction liens. (1) There is equal priority between or
24 among construction lien claimants who contribute to the same
25 real estate improvement project, regardless of the date on

1 which each lien claimant first contributed services or
2 materials and regardless of the date on which he filed his
3 notice of lien. When the proceeds of a foreclosure sale are
4 not sufficient to pay all construction lien claimants in
5 full, each claimant will receive a pro rata share of the
6 proceeds based on the amount of his respective lien.

7 (2) Construction liens attaching at different times
8 have priority in the order of attachment.

9 NEW SECTION. Section 12. Priority of construction
10 liens as against claims other than construction lien claims.

11 (1) A construction lien arising under this part has priority
12 over any other interest, lien, mortgage, or encumbrance that
13 may attach to the building, structure, or improvement or on
14 the real property on which the building, structure, or
15 improvement is located and which is filed after the
16 construction lien attaches.

17 (2) An interest, lien, mortgage, or encumbrance that
18 is filed before the construction lien attaches has priority
19 over a construction lien arising under this part, except as
20 provided in subsections (3) and (4).

21 (3) A construction lien has priority, to the extent of
22 the value of the work or improvement that is severable, over
23 an interest, lien, mortgage, or encumbrance that is filed
24 before the construction lien attaches. If the work or
25 improvement may be removed without harm to the rest of the

1 real property, the lienholder may have the value determined,
2 the work or improvement sold separately on foreclosure, and
3 the proceeds delivered to him to satisfy the construction
4 lien.

5 (4) A construction lien has priority over any
6 interest, lien, mortgage, or encumbrance that is filed
7 before the construction lien attaches if that interest,
8 lien, mortgage, or encumbrance was taken to secure advances
9 made for the purpose of paying for the particular real
10 estate improvement being liened.

11 Section 13. Section 71-3-512, MCA, is amended to read:

12 "71-3-512. Notice of completion. (1) The contracting
13 owner may file a notice of completion at any time after the
14 completion of any work or improvement.

15 (2) The following acts or events constitute completion
16 of any work or improvement for the purpose of filing a
17 notice of completion:

18 (a) the written acceptance by the contracting owner,
19 his agent, or representative of the building, improvement,
20 or structure. The filing of a notice of completion shall not
21 be considered as an acceptance of the building, improvement,
22 or other structure.

23 (b) the cessation from labor for 30 days upon any
24 building, improvement, or structure, or the alteration,
25 addition to, or repair thereof.

1 (3) The notice of completion together with an
2 affidavit of publication as hereinafter required shall be
3 filed in the office of the county clerk and recorder of the
4 county where the property is situated and the notice shall
5 set forth:

6 (a) the date when the work or improvement was
7 completed or the date on which cessation from labor occurred
8 first and the period of its duration;

9 (b) the contracting owner's name or owners' names,--as
10 the--case--may-be, the and address of the owner or addresses
11 of the owners,--as the case may be, and the nature of the
12 title, if any, of the person signing the notice;

13 (c) a description of the property sufficient for
14 identification;

15 (d) the name of the contractor, if any.

16 (4) The notice shall be verified by the contracting
17 owner or his agent.

18 (5) A copy of the notice of completion shall be
19 published once each week for 3 successive weeks in a
20 newspaper of general circulation in the county where the
21 land on which the work or improvement was performed is
22 situated.

23 (6) The contracting owner shall give a copy of the
24 notice of completion to any person who has given the
25 contracting owner a notice of a right to claim a lien."

Section 14. Section 71-3-516, MCA, is amended to read:

"71-3-516. Substitution of bond allowed -- filing -- amount -- condition. (1) Whenever a mechanic's construction lien has been filed upon real property or any improvements thereon, ~~as enumerated in 71-3-501~~, the contracting owner of any interest in such property, whether legal or beneficial, may, at any time before the lien claimant has commenced an action to foreclose such lien, file a bond with the clerk of the district court in the county in which such property is situated or, if such property is situated in more than one county, with the clerk of the district court of any county in which a part of such property is situated.

(2) Such bond shall be in an amount 1 1/2 times the amount of the lien and shall be either in cash or written by a corporate surety company. If written by a corporate surety, such bond shall be approved by a judge of the district court with which such bond is filed.

(3) The bond shall be conditioned that if the lien claimant shall be finally adjudged to be entitled to recover upon the claim upon which his lien is based, the principal or his sureties shall pay to such claimant the amount of his judgment, together with any interest, costs, attorneys' fees, and other sums which such claimant would be entitled to recover upon the foreclosure of a lien against the principal."

Section 15. Section 70-23-607, MCA, is amended to read:

"70-23-607. Claim for common expenses -- priority of lien -- contents -- recording. (1) Whenever an association of unit owners acting through its manager furnishes to a unit any services, labor, or material lawfully chargeable as common expenses, the association of unit owners, upon complying with subsection (2) of this section, shall have a lien upon the individual unit and the undivided interest in the common elements appertaining to such unit for the reasonable value of such common expenses, and the lien shall be prior to all other liens or encumbrances upon the unit except:

(a) tax and assessment liens; and

(b) a first mortgage or trust indenture of record.

(2) An association of unit owners claiming the benefits of subsection (1) of this section shall record in the county in which the unit or some part thereof is located a claim containing:

(a) a true statement of the account due for such common expenses after deducting all just credits and offsets;

(b) the name of the owner of the unit or reputed owner, if known;

(c) a description of the property where the common

1 expenses were furnished and the designation of the unit,
2 sufficient for identification.

3 (3) The claim shall be verified by the oath of some
4 person having knowledge of the facts and shall be filed with
5 and recorded by the recording officer in the book kept for
6 the purpose of recording liens filed under 71-3-501 Title
7 71, chapter 3, part 5. The record shall be indexed as deeds
8 and other conveyances are required by law to be indexed."

9 Section 16. Section 70-23-608, MCA, is amended to
10 read:

11 "70-23-608. Foreclosure of lien under claim for common
12 expenses -- action without foreclosure. (1) The proceedings
13 to foreclose liens created by 70-23-607 shall conform as
14 nearly as possible to the proceedings to foreclose liens
15 created by 71-3-501 Title 71, chapter 3, part 5. The lien
16 may be enforced by the manager acting on behalf of the
17 association of unit owners.

18 (2) An action to recover a money judgment for unpaid
19 common expenses may be maintained without foreclosing or
20 waiving the lien securing the claim for common expenses."

21 NEW SECTION. Section 17. Repealer. Sections 71-3-501
22 through 71-3-503, 71-3-511, and 71-3-514, MCA, are repealed.

23 NEW SECTION. Section 18. Codification instruction.
24 Sections 1 through 12 are intended to be codified as an
25 integral part of Title 71, chapter 3, part 5, and the

1 provisions of Title 71, chapter 3, part 5, apply to sections
2 1 through 12.

3 NEW SECTION. Section 19. Saving clause. This act does
4 not affect rights and duties that matured, penalties that
5 were incurred, or proceedings that were begun before the
6 effective date of this act.

7 NEW SECTION. Section 20. Severability. If a part of
8 this act is invalid, all valid parts that are severable from
9 the invalid part remain in effect. If a part of this act is
10 invalid in one or more of its applications, the part remains
11 in effect in all valid applications that are severable from
12 the invalid applications.

13 NEW SECTION. Section 21. Applicability. This act
14 applies to real estate improvement contracts made after
15 September 30, 1987.

-End-

STATUS SHEET

50th LEGISLATIVE SESSION

JUDICIARY

COMMITTEE

Form CS-32
Rev. 1985

SENATE BILL NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BE NOT CONCURRE IN AS AMENDED DATE
11		3/3/87	3/3/87					3/3/87			
20		3/12/87						3/13/87			
24		3/3/87							3/10/87		
25		3/3/87							3/10/87		
40		3/11/87						3/13/87			
48		3/15/87	tabled 3/27/87							reconsidered 4/8/87	
49		3/4/87								3/19/87	
51		3/10/87								3/20/87	
57		3/4/87	3/4/87					3/4/87			
58		3/10/87	3/11/87	tabled							
77		3/5/87	3/5/87					3/5/87			
88		3/5/87 3/11/87	3/5/87					3/5/87 3/19/87			
92 94		3/11/87 3/11/87						3/19/87 3/13/87			
96		3/11/87						3/17/87			

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

March 12, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on March 12, 1987, at 8:00 a.m. in Room 312 D of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Rapp-Svrcek who was absent.

SENATE BILL NO. 104: Sen. Pinsoneault, District No. 27, stated this bill is simply a repealer eliminating the provision providing that concealment of merchandise does not constitute proof of the commission of theft. He submitted as (Exhibit A) a copy of the current statute, 46-6-504 MCA.

PROPOSERS: FRANK CAPPS, representing the 752 Independent Grocery Stores throughout the State of Montana, stated he owns two grocery stores in Helena, and the year end totals show that out of both grocery stores they averaged \$6,000.00 per store in the last year of known theft from shoplifting. He urged support for SB 104.

TOM DAULING, Montana Food Distributors Association, explained this area of concealment has been singled out. It causes confusion, it is not needed and it is in effect another hurdle that the merchant is faced with. He asked that this section be repealed because the general criminal law addresses this adequately.

GEORGE ALLEN, Montana Retail Association, went on record in support of this legislation. He stated this section should be eliminated and the judge be allowed to decide on the evidence.

There were no further proponents testifying and no opponents.

QUESTIONS (OR DISCUSSION) ON SENATE BILL NO. 104: Rep. Bulger questioned Sen. Pinsoneault on the example he used in his opening remark regarding someone putting a toothbrush in their purse and forgetting to pay for it. He stated the state still has the burden of proof.

Rep. Eudaily asked Sen. Pinsoneault if this section was repealed would it make it any more difficult for someone to go back to the store and return the merchandise. He stated he did not think so.

Rep. Miles asked Mr. Akey how many liens were filed last year. He stated there were about 30,000. She asked how much it would cost to file a lien in the office. Mr. Akey said it costs \$7.00 per new filing and \$5.00 for any amendments, assignments or partial releases of collateral. He stated there is no fee for a termination statement because that is included in the fee for the initial filing. Rep. Thayer closed the hearing on SB 114 by stating this is an important bill for the people in this industry and he urged support.

SENATE BILL NO. 20: Sen. Halligan, District No. 29, stated this is a product of the interim lien law committee. This act generally revises the laws relating to mechanics' liens. Page 1, line 17, states there are no secret liens unless they are included in this particular provision of the bill. Page 4, relates to who may claim a lien. The mechanics' lien name has been changed to a construction lien to have a broader concept and hopefully a clearer concept, he said. Page 7, line 22, consists of the most important provision of the bill. It deals with the problem of secret liens. The interim committee hopes that this bill can be used for at least two years to see how it manages out.

PROPOSERS: IRVIN E. DELLINGER, Secretary for the Montana Building Materials Dealers Association, and Montana Lien Law Coalition, Chairman, stated the subcommittee on lien law has come up with a bill that will address some of the concerns of the legislators. The bill has a notification that must be sent to the consumer which will alert them of potential liens, and what to do to avoid double jeopardy. It must be filed with the clerk and recorder so that there is a public record of potential liens. There is some concern about the number of days to send and file the notice, but we felt that 20 days was a good intermediate number. He stated he feels this is a major improvement to the existing laws and asked that this be passed. He submitted written testimony. (Exhibit A). Also submitted by Mr. Dellinger is (Exhibit B) a Notice of the Right to Claim a Lien.

NORM SIMPSON, Montana Bankers, First Interstate Bank, Kalispell, stated that the spirit of intent for SB 20 was to eliminate, if possible, down to the greatest degree possible, the secret lien. He recommended an amendment by changing Section 7, subparagraph 3, to read 15 days. That way an effective period of 23 days can be obtained.

RILEY JOHNSON, Montana Home Builders, stated they were part of the interim subcommittee and are supporting this legislation. The main concern they had was to eliminate the secret lien. He stated the 20 days they are asking for is meeting our charge to supply the information to the consumer. He

pointed out that there is one problem that the Home Builders have with the bill as amended and that is the initial 20 days from the time you start. The original bill said you can give the notice at any point and you can file it at any point. If someone lets that 20 days go by they lose their right to a lien. The bill now states that we have a five working day limit on filing all liens. He said that he sees this as a potential problem. He stated they can live with the bill as written for two years. They ask for the additional five working days because it is not the consumer who is being suffered here it is the other people in the lending institutions but our charge was to protect the consumer and we feel that we have done that.

JOHN CADBY, Montana Bankers Association, went on record in support of this legislation. He further stated he is authorized by Chip Erdman, Savings and Loan League to state support of the bill. He introduced members from the real estate committee that are in support of SB 20. Gath Kallevig, Sidney; Snuf Fresbe, Cutbank; Joe Bauer, Helena; Carol House, Billings; George Casilton, Butte; W. Simms, Missoula. Mr. Cadby pointed out that 20 plus 5 days to file is plenty of time. The bottomline of this bill is that it does protect the homeowner.

SUE BARTLETT, Montana Association of Clerks and Recorders, Lewis and Clark County Clerk and Recorder that monitored the subcommittee meetings and is representing the Association, stated the clerks interest in this bill is a narrow interest but SB 20 addresses it well. The procedures outlined in this bill conform well to the procedures currently used in the clerks offices. She further pointed out the clarity of the bill is vital and SB 20 is very easy to understand.

WILLIAM L. MCCANLEY, Cut Bank Building Services, and President of the Montana Building Materials Dealer Association, acknowledged that each time the lien problem is addressed we end up with the little old lady and the big contractor comparison. No one wants to pay twice, but never before with the economy the way it is has it ever been so essential to pay only once. He stated this is not a perfect bill but he agreed with the idea of letting it work for two years and then coming back to make corrections. He submitted written testimony. (Exhibit C).

REP. DAVE BROWN, went on record in support of SB 20 and stated this is a very reasonable solution and requests that the bill be left intact. (See attached Visitor's Register for further proponents that did not testify.)

QUESTIONS (OR DISCUSSION) ON SENATE BILL NO. 20: Rep. Eudaily asked Sen. Halligan if the filing with the county

56

clerk requires that it be mailed by certified mail and Sen. Halligan stated it could be or it could be delivered personally.

Sen. Halligan closed the hearing on SB 20.

SENATE BILL NO. 229: Sen. Mazurek, District No. 23. The original hearing took place on March 3, 1987 at 8:00 a.m. in Room 312 D with the Judiciary Committee. Sen. Mazurek requested any proponents or opponents wishing to speak on the bill be allowed to proceed. He stated the hearing notice was short on this bill and he asked that anyone who had testimony to appear on this date.

OPPONENTS: FREDERICK SHERWOOD, attorney for the Montana Advocacy Program, stated his main objection is that the bill would remove from the courts and give to an administrative agency the important decision-making power as to where a disabled person should be placed, either in Boulder or in another community facility. Courts are best equipped to make decisions of this magnitude, for a person's rights are best safeguarded when he has the opportunity to have his circumstances weighed under the rules of evidence and cross-examination. Courts are also more accountable for their decisions. He submitted written testimony. (Exhibit A).

ALLEN SMITH JR., Attorney, Mental Disabilities Board of Visitors, stated the proposed changes are inconsistent with other provisions of Title 53, Chapter 20, Part 1. This bill eliminates the district courts' authority to compel these very same persons to undertake treatment. The courts could only refer them to SRS for services. The courts would be prohibited from issuing an order for treatment, even if the state's professional persons determine that a person needs treatment and that treatment would be in the person's best interests and even if the person is unable to protect his life and health or the person is a threat to the life or safety of others. He further stated he does not see why SRS cannot trust in that same integrity, judgement, and discretion that is a hallmark of our judicial system. He submitted written testimony. (Exhibit B).

PROPOSERS: CHRIS VOLINKATY, Lobbyist on behalf of the Developmentally Disabled, stated that the problem is that there is not enough services to go around. Jumping the waiting lists gives unfair advantage to clients whose parents are aware of what can be done and have the resources to do it. Jumping the lists is unfair and could cause a big problem for community programs.

ADJOURNMENT: There being no further business to come before the committee, the hearing was adjourned at 11:20 a.m.

DAILY ROLL CALL
JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 12, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)		✓	
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

House Judiciary Committee
S.B. 20 "Revisions To Mechanics Lien Law"

March 12, 1987

A
3-12-87
SB # 50

During the last session of the Legislature, we appeared before you and asked you to table some proposed lien law changes as they just were not workable for the industry. We asked that a Joint Interim ^{this} Subcommittee be appointed and we would work with / committee to make necessary changes which you felt were needed in our lien law. I would like at this time to thank you for your vote of confidence in helping to set up this committee. I would also like to thank Senator Halligan who was chairman of this committee and Rep. John Mercer who acted as Co-chairman. Member of the House serving on this committee were Rep. Baichini, Kurt Kruger and Bob Ellerd. Senators serving on committee were Senators Hager, Christeans and Thayer.

We formed a coalition made up of:

Montana Home Builders Assoc.
Montana Contractors Assoc
Montana Redimix Assoc.
National Electrical Contractors Assoc.
Sheetmetal & Air Conditioners Assoc.
NFI
Masonry Contractor Frank Gruber
MBMDA

Others involved who met with the Subcommittee were, Mont. Bankers Assoc., representatives for the Clerk & Recorders, Title Companies.

We met with the Joint Interim Subcommittee 7 or 8 times, making suggestions here, compromising there. We feel that the subcommittee has come up with a bill that will address some of the concerns of you Legislators. The bill has a notification that must be sent to the consumer which will alert them of potential liens, and what to do to avoid double jeopardy. It must be filed with the clerk & recorder so that there is a public record of potential liens. I might add that we are one of two or three states that will require that the notice must be filed with clerk & recorder along with sending notice to consumer. All the other states just require that the notice be sent to the consumer.

These notifications are going to make extra work and added costs for the materialmen and subcontractors, but I feel that it is something that we can implement.

There is some concern about the number of days to send and file the notice. The number of days varies over a broad range from state to state, some require 10, 14, 20, 21, 30, 45, 60. In talking with dealers in other state they mentioned that to get as many days as possible. We felt that 20 days was a good intermediate number. Minnesota recently raised theirs from 30 to 45. Where the materialmen have bookkeepers to help them with filing we do have some concern for the subcontractor, the plumber, the electrician the one man operation that will have a more difficult time in sending and filing the notice. If they get busy and fail to send the notice and ^{file it within the proper number of days} there is a potential for someone losing there lien rights.

I feel that Senator Halligan's Joint Interim Subcommittee did an excellent job on these revisions. I know that it is a major improvement to our current law. I asked that you concur and give a DO Pass on S. B. 20. Thank you...

Irvin E Dellinger
Montana Lien Law Coalition
Chairman

NOTICE OF THE RIGHT TO CLAIM A LIEN

EXHIBIT B

WARNING: READ THIS NOTICE. PROTECT YOURSELF FROM PAYING ANY
CONTRACTOR OR SUPPLIER TWICE FOR THE SAME SERVICE.

DATE 3-11-87

HB JB#30

To: _____ Date of mailing: _____

Owner _____

Owner's address _____

This is to inform you that _____ has begun to
provide _____ (description of services or materials)
ordered by _____ for improvements to property you own.
The property is located at _____.

A lien may be claimed for all services and materials
furnished to you, if this notice is given to you within 20
days after the services or materials described are first
furnished to you. If the notice is not given within that
time a lien is enforceable only for the services or materials
furnished within 20 days before the notice is given.

Even if you or your mortgage lender have made full
payment to the contractor who ordered these services or
materials, your property may still be subject to a lien
unless the subcontractor or material supplier providing this
notice is paid. **THIS IS NOT A LIEN.** It is a notice sent to
you for your protection in compliance with the construction
lien laws of the State of Montana.

This notice has been sent to you by:

NAME: _____
ADDRESS: _____
TELEPHONE: _____

IF YOU HAVE ANY
QUESTIONS ABOUT THIS
NOTICE, CALL US

IMPORTANT INFORMATION ON REVERSE SIDE

IMPORTANT INFORMATION FOR YOUR PROTECTION

Under Montana's laws, those who work on your property or provide materials and are not paid have a right to enforce their claim for payment against your property. This claim is known as a construction lien.

If your contractor fails to pay subcontractors or material suppliers or neglects to make other legally required payments, the people who are owed money can look to your property for payment, even if you have paid your contractor in full.

The law states that all people hired by a contractor to provide you with services or materials must give you a notice of the right to lien to let you know what they have provided.

WAYS TO PROTECT YOURSELF ARE:

-- RECOGNIZE that this notice of delivery of services or materials may result in a lien against your property unless all those supplying a notice of the right to lien have been paid.

-- LEARN more about the construction lien laws and the meaning of this notice by contacting an attorney, or the firm sending this notice.

-- WHEN PAYING your contractor for services or materials, you may make checks payable jointly to the contractor and the firm furnishing services or materials for which you have received a notice of the right to lien.

-- GET EVIDENCE that all firms from whom you have received a notice of the right to lien have been paid or have waived the right to claim a lien against your property.

-- CONSULT an attorney, a professional escrow company, or your mortgage lender."

VISITORS' REGISTER

JUDICIARY

COMMITTEE

SENATE

BILL NO. 20

DATE March 12, 1987

SPONSOR

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

March 13, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on March 13, 1987, at 8:00 a.m. in Room 312 D of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Grady and Hannah who were absent.

EXECUTIVE SESSION:

ACTION ON SENATE BILL NO. 249:

Rep. Mercer moved SB 249 BE CONCURRED IN. He stated he spoke to many people in regard to this bill especially to lowering the limits because property damages can be treated differently from personal injury damages. He recommended the bill be concurred in as it now stands. Question was called and a voice vote was taken. The motion CARRIED 11-3, with Reps. Cobb, Miles and Brown dissenting. SB 249 BE CONCURRED IN.

ACTION ON SENATE BILL NO. 20:

Rep. Mercer moved that SB 20 BE CONCURRED IN. Question was called and a voice vote was taken. The motion CARRIED unanimously. SB 20 BE CONCURRED IN.

ACTION ON SENATE BILL NO. 104:

Rep. Gould moved that SB 104 BE CONCURRED IN. Question was called and a voice vote was taken. The motion CARRIED 11-3, with Reps. Miles, Strizich and Bulger dissenting. SB 104 BE CONCURRED IN.

ACTION ON SENATE BILL NO. 40:

Rep. Bulger moved SB 40 BE CONCURRED IN. Question was called and a voice vote was taken. The motion CARRIED unanimously. SB 40 BE CONCURRED IN.

ACTION ON SENATE BILL NO 214:

Rep. Daily moved that SB 214 BE NOT CONCURRED IN. Rep. Mercer stated this bill needs some clarification. Rep. Gould pointed out that SRS does not want to have to take every child given to them. Rep. Daily stated if a child is

STANDING COMMITTEE REPORT

MARCH 13,

19

27

Mr. Speaker: We, the committee on JUDICIARY

report SENATE BILL NO. 20

☐ do pass

☐ do not pass

☒ be concurred in

☐ be not concurred in

☐ as amended

☐ statement of intent attached

Chairman

MS
THIRD

BLUE

REP. MERCER TO CARRY BILL!

reading copy ()

color

DAILY ROLL CALL
JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 13, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)		✓	
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)		✓	
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

Total 92

Noes: Cobb, Kadas, Rapp-Svrcek.

Total 3

Excused: Daily, Harrington, Moore, Pavlovich.

Total 4

Absent or not voting: Bardanouve.

Total 1

HB 795 passed as follows:

Ayes: Addy, Asay, Bardanouve, Bradley, Brandewie, D. Brown, J. Brown, Bulger, Campbell, Cobb, Cohen, Compton, Connelly, Corne', Darko, DeMars, Devlin, Donaldson, Driscoll, Ellison, Eudaily, Fritz, Giacometto, Gilbert, Glaser, Gould, Grady, Grinde, Hannah, Hansen, Hanson, Harp, Harper, Hayne, Hoffman, Holliday, Iverson, Jenkins, Jones, Kadas, Keenan, Keller, Kennerly, Kitselman, Koehnke, Lory, McCormick, Manuel, Menahan, Menke, Mercer, Meyers, Miles, Miller, Nelson, Nisbet, O'Connell, Patterson, Peck, Peterson, Phillips, Pistoria, Poff, Poulsen, Quilici, Ramirez, Raney, Rapp-Svrcek, Ream, Rehberg, Roth, Russell, Sales, Sands, Simon, Smith, Spaeth, Squires, Stang, Stratford, Strizich, Swift, Switzer, Swysgood, Thoft, Thomas, Vincent, Wallin, Williams, Winslow, Mr. Speaker.

Total 91

Noes: Bachini, Cody, Nathe, Schye, Whalen.

Total 5

Excused: Daily, Harrington, Moore, Pavlovich.

Total 4

Absent or not voting: None.

Total 0

SB 14 concurred in as follows:

Ayes: Addy, Asay, Bardanouve, Bradley, Brandewie, D. Brown, J. Brown, Bulger, Campbell, Cody, Cohen, Compton, Connelly, Corne', Darko, DeMars, Donaldson, Eudaily, Fritz, Giacometto, Gilbert, Glaser, Gould, Grady, Grinde, Hannah, Hansen, Hanson, Harp, Harper, Hayne, Hoffman, Holliday, Iverson, Jones, Kadas, Keenan, Keller, Kennerly, Kitselman, Lory, McCormick, Manuel, Menahan, Menke, Meyers, Miles, Miller, Nathe, Nelson, Nisbet, O'Connell, Patterson, Phillips, Pistoria, Poulsen, Quilici, Ramirez, Raney, Rapp-Svrcek, Ream, Rehberg, Roth, Russell, Sands, Schye, Simon, Smith, Spaeth, Squires, Stang, Stratford, Strizich, Swift, Switzer, Swysgood, Thoft, Thomas, Vincent, Wallin, Williams, Winslow, Mr. Speaker.

Total 83

Noes: Bachini, Cobb, Devlin, Driscoll, Jenkins, Koehnke, Mercer, Peck, Peterson, Poff, Sales, Whalen.

Total 12

Excused: Daily, Harrington, Moore, Pavlovich.

Total 4

Absent or not voting: Ellison.

Total 1

SB 20 concurred in as follows:

Ayes: Addy, Bachini, Bardanouve, Bradley, Brandewie, D. Brown, Brown, Bulger, Cobb, Cohen, Compton, Connelly, Corne', Darko, Devlin, Donaldson, Eudaily, Fritz, Giacometto, Gilbert, Gould, Grady, Hanse, Hanson, Harp, Harper, Hayne, Hoffman, Holliday, Iverson, Jenkin, Kadas, Keenan, Keller, Kennerly, Kitselman, Koehnke, Lory, McCormick, Manuel, Menahan, Mercer, Miles, Nelson, Nisbet, O'Connell, Peterson, Phillips, Pistoria, Quilici, Ramirez, Raney, Rapp-Svrcek, Ream, Rehberg, Roth, Russell, Sales, Schye, Simon, Smith, Spaeth, Squire, Stang, Stratford, Strizich, Swift, Switzer, Thomas, Vincent, Whale, Williams, Winslow, Mr. Speaker.

Total 75

Noes: Asay, Campbell, Cody, DeMars, Driscoll, Ellison, Glaser, Grinde, Hannah, Jones, Menke, Meyers, Miller, Nathe, Patterson, Poff, Poulse, Sands, Swysgood, Thoft, Wallin.

Total 21

Excused: Daily, Harrington, Moore, Pavlovich.

Total 4

Absent or not voting: None.

Total 0

SB 40 concurred in as follows:

Ayes: Addy, Asay, Bachini, Bardanouve, Bradley, Brandewie, D. Brown, Brown, Bulger, Campbell, Cobb, Cody, Cohen, Compton, Connelly, Corne', Darko, DeMars, Devlin, Donaldson, Driscoll, Eudaily, Fritz, Giacometto, Gilbert, Glaser, Gould, Grady, Grinde, Hannah, Hansen, Hanson, Harp, Harper, Hayne, Hoffman, Holliday, Iverson, Jenkins, Jones, Kadas, Keenan, Keller, Kennerly, Kitselman, Koehnke, Lory, McCormick, Manuel, Menahan, Menke, Mercer, Meyers, Miles, Miller, Nathe, Nelson, Nisbet, O'Connell, Patterson, Peterson, Phillips, Pistoria, Poff, Poulsen, Ramirez, Raney, Rapp-Svrcek, Ream, Rehberg, Roth, Russell, Sales, Sands, Schye, Simon, Smith, Spaeth, Squires, Stang, Stratford, Strizich, Swift, Switzer, Swysgood, Thoft, Thomas, Vincent, Wallin, Whalen, Williams, Winslow.

Total 92

Noes: Ellison, Peck, Quilici, Mr. Speaker.

Total 4

Excused: Daily, Harrington, Moore, Pavlovich.

Total 4

Absent or not voting: None.

Total 0

SB 68 concurred in as follows:

Ayes: Addy, Asay, Bachini, Bardanouve, Bradley, Brandewie, D. Brown, Brown, Bulger, Campbell, Cobb, Cody, Cohen, Compton, Connelly, Corne', Darko, DeMars, Devlin, Donaldson, Driscoll, Ellison, Eudaily, Fritz, Giacometto, Gilbert, Glaser, Gould, Grady, Grinde, Hannah, Hansen, Hanson, Harp, Harper, Hayne, Hoffman, Holliday, Iverson, Jenkins, Jones, Kadas, Keenan, Keller, Kennerly, Kitselman, Koehnke, Lory, McCormick, Manuel, Menahan, Menke, Mercer, Meyers, Miles, Miller, Nathe, Nelson, Nisbet, O'Connell, Patterson, Peck, Peterson, Phillips, Pistoria, Poff, Poulsen, Quilici, Ramirez, Raney, Rapp-Svrcek, Ream, Rehberg, Roth, Russell, Sales, Sands, Schye, Simon, Smith, Spaeth, Squires, Stang, Stratford, Strizich, Swift, Switzer, Swysgood, Thoft, Thomas, Vincent, Wallin, Whalen, Williams, Winslow, Mr. Speaker.

Total 96

68

1 SENATE BILL NO. 20

2 INTRODUCED BY HALLIGAN, THAYER, POULSEN, MERCER, HAGER,
3 RASMUSSEN, BOYLAN, GAGE, WALLIN, D. BROWN

4 BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE ON LIEN LAWS

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
7 LAWS RELATING TO MECHANICS' LIENS; AMENDING SECTIONS
8 70-23-607, 70-23-608, 71-3-512, AND 71-3-516, MCA; REPEALING
9 SECTIONS 71-3-501 THROUGH 71-3-503, 71-3-511, AND 71-3-514,
10 MCA; AND PROVIDING AN APPLICABILITY DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 NEW SECTION. Section 1. Scope. This part creates and
14 provides for the attachment and enforceability of a
15 construction lien against real estate in favor of a person
16 furnishing services or materials under a real estate
17 improvement contract. A nonconsensual lien against real
18 estate for improvements made thereon may not arise except as
19 provided in this part.

20 NEW SECTION. Section 2. Definitions. (1)
21 "Commencement of work" means the date of the first visible
22 change in the physical condition of the real estate caused
23 by the first person furnishing services or materials
24 pursuant to a particular real estate improvement contract.

25 (2) "Construction lien" or "lien" means a lien against

THERE ARE NO CHANGES ON
SB 20 AND WILL NOT BE
REPRINTED. PLEASE REFER
TO SECOND READING (YELLOW)
OR THIRD READING (BLUE)
FOR COMPLETE TEXT.

REFERENCE BILL